A

TREATISE

ON

CONVICTIONS

ON

PENAL STATUTES.

BY

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M.DCC.XCI.

TO

SIR FRANCIS BULLER, BART.

ONE OF THE JUSTICES OF HIS MAJESTY'S

COURT OF KING'S BENCH,

UNDER WHOSE TUITION,

WHATEVER ACCURACY OF INVESTIGATION,

OR PRECISION IN STATEMENT,

MAY APPEAR IN THE FOLLOWING WORK,

WAS ACQUIRED,

THIS ATTEMPT TO ARRANGE AND ILLUSTRATE

THE DECISIONS OF THE COURT,

ON A BRANCH OF THE LAW VERY IMPORTANT

TO THE SUBJECTS OF THIS KINGDOM,

IS,

WITH GREAT RESPECT AND REGARD,

INSCRIBED,

BY HIS OBEDIENT AND FAITHFUL SERVANT,

THE COMPILER.

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INTRO-

INTRODUCTION.

THE following Treatiſe, which was originally compiled for private uſe, is now offered to the Public with the view of facilitating to Juſtices of the peace, and thoſe who are moſt frequently their adviſers, one of the moſt important and difficult parts of their duty. It cannot be expected to afford much information to gentlemen of the bar; to whom moſt of the caſes cited in it are already familiar. Even to them, however, it may not be wholly without it's uſe; by furniſhing them with a book which may readily be conſulted on the circuit, or at ſeſſions, where ſubjects of this kind may frequently

occur. But the principal object is, to enable thoſe in whom ſo great a truſt as the execution of penal ſtatutes is repoſed, to ſee in one clear point of view the mode and forms of proceeding that are required of them by the ſuperior court. It is on this account that ſeveral of the leading caſes are given more at large than would otherwiſe have appeared neceſſary: ſince the grounds and principles of a determination are often of more extenſive utility than the determination itſelf.

From the preſent compilation the reader is not to expect in general more than what relates to the *form* of Convictions: for, though in many caſes a reference to the form of his proceedings may greatly aſſiſt a Magiſtrate in aſcertaining the principle on which they are founded, this was but a collateral object with the compiler; whoſe chief purpoſe is, to render every attentive and intelligent Juſtice of the Peace in a great meaſure independent on profeſſional advice in the technical part of his duty. There is, however, a deviation from this plan in two or three inſtances; wherein a caſe, though applicable rather to the *merits* than the form of a Conviction, ſeemed

ſeemed to convey information too important to be wholly omitted.

For the reſt: a diligent attention to the ſtatutes themſelves, as arranged and explained in the valuable compilation of Dr. Burn, may ſuffice. The ſubject of our preſent inquiry forms, perhaps, the only defective and unſatisfactory title in his work; and ſeems to have been ſlighted by him, for reaſons which, it is hoped, do not render the preſent publication ſuperfluous or uſeleſs. If Convictions ſhould hereafter be regularly returned to the quarter-ſeſſions, as it has been declared from high authority * that they ought to be, they would ſoon become leſs "tedious and trouble-"ſome" in drawing up; which practice will render more familiar to thoſe magiſtrates who ſhall be induced by the above opinion to attend to this part of their duty. Neither is it, perhaps, much to be wiſhed, notwithſtanding the eaſe

* Juſtices ought in all caſes to return Convictions to the ſeſſions, whether an appeal lies or not, that the Crown may not be deprived of it's ſhare of the forfeitures: and when that is done, a return of a copy to a certiorari is good.—Per Buller J. in *R. v. Eaton*, 1 Term. Rep. 285.

it might afford to magiſtrates, that ſummary forms of Conviction ſhould be univerſally eſtabliſhed: unleſs we deem it a greater advantage to the ſubject, that juſtices of the peace ſhould be relieved from a ſlight additional trouble, than that the moſt effectual reſtraint on the arbitrary tendency of ſummary juriſdictions ſhould be preſerved. The extenſion of ſuch juriſdictions to ſo many penal caſes, we cannot forget, has often been deprecated by the beſt writers on the laws and conſtitution, as an encroachment on the moſt valuable privilege of Britiſh ſubjects. But this objection would have much greater weight were they in all caſes relieved from the important duty of ſtating their proceedings on record. The preſent publication conſults the convenience of magiſtrates on a different principle. By arranging, combining, and illuſtrating the rules laid down at various periods by ſuperior authority, it endeavours to render them more certain in the application and eaſy in the obſervance, and to obviate all pretence for wholly diſpenſing with them.

Summary forms, indeed, have been eſtabliſhed of late years in ſeveral inſtances where they

they were not allowed when the earlier caſes in this treatiſe aroſe; and particularly as to the offences of "profane ſwearing," "deer-"ſtealing," and "trading as a hawker or "pedlar without a licence:" though the caſes on theſe ſubjects, being neceſſary for the illuſtration of general principles, are of courſe inſerted. Yet, ſhould it pleaſe the legiſlature hereafter to eſtabliſh ſome general ſummary form to be applied to all Convictions (a meaſure which, if practicable at all, ought not ſurely to be adopted without the moſt ſerious deliberation), even in that caſe it would ſtill be neceſſary at leaſt to *deſcribe the offence* with preciſion and certainty. In that point of view many of the caſes collected and explained in this work would continue to be important and uſeful.

In the mean time, the compiler flatters himſelf that it will ſupply a title, the defects of which muſt have been often obſerved in works of a ſimilar but more extenſive nature; that it may be found to poſſeſs the only merit it claims, utility, and obtain the only praiſe it ſeeks, that of method and accuracy.

It remains that ſomething ſhould be ſaid reſpecting the precedents ſubjoined to this treatiſe. They were moſtly collected whilſt the compiler was pupil to an eminent ſpecial pleader, now a learned judge in the Court of King's Bench, and a few from caſes determined in Court whilſt the compiler attended at the bar. They have, in general, the ſignatures of eminent counſel, or the ſanction of the Court upon argument. Yet it is not meant to offer them as infallible, but as uſeful auxiliaries to the treatiſe.

ON THE

Form of Convictions

ON

PENAL STATUTES.

A Conviction (in the ſenſe in which it is here uſed) is, "A record of the "ſummary proceedings upon any penal ſta-"tute before one or more Juſtices of the "Peace, or other perſons duly authorized, in "a caſe where the offender has been con-"victed and ſentenced."

As the above mode of judicature has been introduced in derogation of the common law, and operates to the excluſion of trial by jury, the ſuperior courts of juſtice have rigidly confined it's authority to the ſtrict letter of the reſpective ſtatutes by which

it was eſtabliſhed; and, in reviſing it's proceedings, they require, that rules, ſimilar to thoſe adopted by the common law in criminal proſecutions and founded in natural juſtice, ſhould appear to have been obſerved; unleſs where the ſtatutes expreſsly diſpenſe with the form of ſtating them.

" Convictions," ſays Lord Mansfield (in
[a] Burr. 613. " *R. v. Little* [a]) ought to be taken ſtrictly;
" and it is reaſonable they ſhould be ſo, be-
" cauſe they muſt be taken to be true
" againſt the defendant, and therefore ought
" to be conſtrued with ſtrictneſs." A ſimi-
[b] Burr. 2281. lar doctrine was held in *R. v. Corden* [b], where, the reporter ſays, the court " thought that
" a tight hand ought to be holden over theſe
" ſummary convictions, and it ought to ap-
" pear to them that the Juſtice has juriſdic-
" tion in the caſe: they ought to be kept
" to a proper degree of ſtrictneſs, and not
" to be made arbitrarily and without au-
" thority."

But though the Courts are *ſtrict* in forming their judgment upon convictions, they will not always be *aſtute* in finding objections to them.

Accordingly,

Accordingly, in *R. v. Chandler*[c], Lord Ch. J. Holt ſays, "In theſe convictions by Juſtices of Peace in a ſummary way, where the antient courſe of proceeding by indictment and trial by jury is diſpenſed with, the court may more eaſily diſpenſe with forms, and it is ſufficient for the Juſtices, in the deſcription of the offence, to purſue the words of the ſtatute; and they are not confined to the legal forms requiſite in indictments for offences by the common law; for, though all acts which ſubject men to new and other trials than thoſe by which they ought to be tried by the common law, being contrary to the rights and liberties of Engliſhmen as they were ſettled by Magna Charta, ought to be taken ſtrictly; yet, when ſuch a ſtatute is made, one ought to purſue the intent of the makers, and expound it in ſo reaſonable a manner as that it may be executed."

[c] Ld. Raym. 581.

A ſimilar doctrine is ſaid to have been laid down by Mr. Juſtice Aſhurſt in *R. v. Thompſon*[d]; who obſerves: "As to the principle drawn from the old caſes, that the court will be aſtute in diſcovering defects in

[d] Term. Rep. vol. ii. p. 18, &c.

" in convictions before ſummary juriſdic-
" tions; there ſeems to be no reaſon for it.
" Whether it was expedient that thoſe juriſ-
" dictions ſhould have been erected, was a
" matter for the conſideration of the legiſ-
" lature: but, as long as they exiſt, we ought
" to go all reaſonable lengths in ſupport of
" their determinations. Therefore in what-
" ever light they may have formerly been
" viewed, yet the country are now convinced
" that they derive conſiderable advantage
" from the exerciſe of the powers delegated
" to the Juſtices of Peace, and in modern
" times they have received every ſupport
" from the courts of law."

The beſt method, perhaps, of reconciling theſe different opinions (which in the abſtract appear ſcarcely conſiſtent with each other) is by an obſervation, which the caſes in general will be found to warrant; namely, that, as to thoſe parts of the record which are neceſſary to ſhow the juriſdiction of the Magiſtrate and give him cognizance of the complaint, the courts are more ſtrict in their rule of conſtruction, and expect more preciſion in the ſtatement, than as to the ſteps that follow when that eſſential point has been aſcer-

tained. They will not admit a ſummary and (if one may ſtill uſe the expreſſion) an unconſtitutional juriſdiction, unleſs the caſe in which it has been exerciſed, is *literally* the ſame as deſcribed by the ſtatute that gave it. But the Magiſtrate once appearing to be duly authorized, they will not *preſume* againſt the regularity and juſtice of his proceedings, if he has ſtated them with but a reaſonable degree of accuracy. Thus (as will be ſeen hereafter) the caſes are ſtrict as to the ſtile and title of the Magiſtrate convicting (which otherwiſe would appear a trifling objection) and they require, in ſome reſpects, a fuller ſtatement of the offence in the information than in the evidence itſelf.

There are a few general rules, reſpecting a conviction, not properly reducible to any particular branch of it: as

Firſt, *It muſt be under the hand and ſeal of the Magiſtrate before whom it was taken.* This is implied in the idea of ſuch a record; and it could not otherwiſe even come before the court of K. B. for their determination.

Secondly,

Secondly, *A conviction muſt be in the preſent tenſe.* But this doctrine, which ſeems to be laid down generally in the older caſes, ought, in reaſon, to extend only to the judgment; for though it ſeems reaſonable (in point of form at leaſt) that the Magiſtrate ſhould ſpeak in the preſent tenſe of his own determination; yet the preceding acts of his juriſdiction, ſome of which *muſt*, and others *may* have paſſed at a different time, are more properly ſtated in the paſt tenſe. The caſe of the *King v. Landen*[e], where a conviction of forcible entry was quaſhed, becauſe in the præterperfect tenſe *(acceſſimus et vidimus)* ſeems right; for this reaſon, namely, that the Magiſtrates were then ſtating their own acts at the time of conviction: but it may be doubted whether the objection in the *King v. Roberts*[f], that the witneſs *præſtitit ſacramentum*, inſtead of *præſtat*, would be deemed valid in any caſe where the evidence is ſtated to be given at one time, and the judgment (by regular adjournment) at another. In the *King v. Hall*[g] the firſt objection was, that the information is not in the *preſent* tenſe. But the court ſaid, the words objected to were better

[e] Stra. 443.

[f] Ld. Raym. 1376. Stra. 608.

[g] Trin. 26 G. III. 1 Term. Rep. 320.

in the *paſt* than in the preſent tenſe, becauſe they referred to time paſt, namely the time of making the information.

After all, this is admitted in the *King v. Roberts* to be only an objection to *form*, and would not now, perhaps, be attended to were the point again to come in queſtion.

Thirdly, It is alſo a general rule that *A conviction muſt be* certain, *and not taken upon collection.* Theſe are the words of Lord Ch. J. Holt in the *King v. Fuller*[h], where a conviction for having two concealed waſh-backs[i] was quaſhed, becauſe the information was upon the thirtieth of March, and the oath of the witneſs, on the third of April, was, that defendant "*modo habet et cuſtodit* "*eadam duo privata ſeu concelata vaſa*;" therefore the evidence is of a fact ſubſequent to the information, altho' it was alledged, in ſupport of the conviction, that the words of the oath, "quod modo habet *eadem duo*, &c." prove that he had them at the time of the *information.* Thus alſo a conviction was quaſhed, becauſe it was for keeping a gun "being "an engine for the deſtruction of the game," without

[h] Ld. Raym. 509.

[i] Con. to 8 & 9. W. III. c. 19.

without saying that the defendant *used it* for the destruction of the game[k].

[k] The *King v. Hurt*, cited in Dougl. 658 in margine.

Fourthly, *In a conviction the offence need not be laid to be* contra pacem, *as in an indictment.* Adjudged in *Chandler's* case above cited: for "in these summary convictions," says Holt, "there is no need to pursue so "strictly the forms of law." But perhaps a better reason is given in the same case[l] by Northey, the Attorney General, namely, that "this is not the *King's* prosecution; he can "have no fine; but the prosecution of the "party; and this is the memorandum of "what the Justice had done in that mat-"ter."

[l] Salk. 378.

Fifthly, It seems to be settled, that *a conviction cannot be good in part and bad in part, but must be wholly quashed, if there is any fault*; for though in one of the later cases (the *King v. Hall*[m]) a conviction is said to have been quashed as to part, and confirmed as to part, this was by the admission of the defendant's counsel, and not only the general practice is otherwise, but in one case (*R. v. Catheral*[n]) where a defendant was convicted for *not accounting* for money received

[m] Cowper, 728.

[n] Stra. 900.

ceived as Collector of a turnpike, *and not paying over the money*; the latter being insufficiently expressed, the court would not let the commitment stand good as to the not accounting: for, they said, "it was one intire "nonfeasange charged both in the conviction "and commitment, and they would not sever "them *."

* Vid. post.

Information.

Information.

A Conviction uſually conſiſts of ſix principal parts: Firſt, *The Information*; — Secondly, *The Summons*; —Thirdly, *The Appearance* or *Non-Appearance of the Defendant*;—Fourthly, (in caſe he does appear) his *Defence* or *Confeſſion*;—Fifthly, (unleſs he has confeſſed) *The Evidence*;—Sixthly, *The Judgment*.

I. The *information muſt always be ſtated at large*. This is repeatedly laid down in the caſes, and is neceſſary in order to give the Magiſtrate his juriſdiction. Where the ſtatute directs the information to be *on oath*, it ſhould be ſo ſtated in the conviction °.

° *Rex v. Robert Willis.* Hil. 19 G. III. MS.

Sometimes, where the offence is an invaſion of private property, a complaint from the *owner*, or at leaſt ſome proof of his diſſent, is deemed neceſſary, even though the ſtatute does not expreſsly require it; as in the caſe of

of the *King v. Carden*[a], a conviction on 5 G. III. c. 14, for the preſervation of fiſh-ponds and other waters, was quaſhed, becauſe (ſaid the Court) "there is no complaint from "the owner, nor did it even appear to have "been without his conſent. It ought at leaſt "to appear that it was without his conſent. "This is plainly implied in the act of par-"liament: the giving the penalty to the "owner ſhews it. Here it does not ſuf-"ficiently appear that this was private pro-"perty, or who was the owner. The wit-"neſs who gives the juſtice to underſtand "that Mr. H. was the owner, was not upon "oath, and therefore no witneſs."

[a] 4 Burr. 2279.

The INFORMATION ſhould contain:

Firſt, *The day when it was taken*; that it may appear to have been given within the time limited by the ſtatute.

Secondly, *The place where it was taken*, that it may appear the juſtice was acting within the limits of his juriſdiction.

And here it ſhould ſeem that the name of the county muſt be in the *body* of the con-

viction; and that a reference to the county in the margin is not ſufficient, as it would be in an order: for the courts are far ſtricter in caſes of convictions; and it has always been deemed neceſſary in an indictment.

Thirdly, *The name of the informer*; that, as moſt of the ſtatutes give a part of the penalty to him, it may appear afterwards that the witneſs is not the ſame perſon; it having been ſettled that the informer cannot be a witneſs where he is intitled to any part of the penalty *.

Fourthly, *The name and ſtile of the juſtice or juſtices to whom it is given*; that it may appear he or they have authority to take ſuch an information.

In the firſt caſe on this ſubject (*R. v. Dobbyn*[p]) an *order* of two juſtices was quaſhed, becauſe it did not appear they were juſtices *of* the county, or *for* the county, but only *reſiding in* the county; from which it may be inferred, that the ſame objection would be fatal to a *conviction*, in which greater ſtrictneſs is required.

[p] Salk. 474.

* Vid. poſt, title Evidence.

In

In a ſubſequent caſe, *R. v. Johnſon*[q], a conviction on 5 An. c. 14. for keeping a gun, not being qualified (after an objection to the ſummons, which was overruled *) was objected to, becauſe the ſtatute requires the conviction to be by juiſtces of the county where the offence was committed, and that does not appear in this caſe. Et per Curiam, that muſt appear, elſe they have no juriſdiction. Et per Wearge, it does, for they diſtribute part of the penalty to the poor of the pariſh of *Chelfield, in com' Hant', infra quam paroch' offenſum præd' commiſſum fuit.* And the juſtices are juſtices for the county of Kent, and ſtile themſelves ſo. Adjournatur. It was quaſhed[r]; for per Curiam, "their juriſdiction muſt ap- "pear otherwiſe than out of their own "mouth." By this the Court ſeems to mean, that it is not ſufficient to ſet forth the authority of the juſtices in the adjudication (where they more properly ſpeak in their own perſons) but it muſt appear upon their ſtatement of the information, that being the ground of all the ſubſequent proceedings. This objection has been carried ſo far, that it has been made a queſtion whe-

[q] Stra. 261.

[r] Mich. 7 Geo.

* Vid. poſt, title **Appearance**.

ther a conviction (of forcible entry) taken before juſtices *ad pacem in comitatu prædicto conſervandam aſſignatis*, without ſaying *pro comitatu*, ought not to be quaſhed. But the Court quaſhed it for another fault, viz. being in the præterperfect tenſe. *R. v. Landen*[s].

[s] Stra. 443. Vid. ante. p. 12.

In *R. v. Chipp*[t] the third exception was, that the conviction ſet forth, that information was given to ſuch a one, *juſtice of peace*, but did not ſay *adtunc* a juſtice; and he might be a juſtice at preſent, and not at the time of the information. But the Court ſaid, that the conviction ſet forth, that information was made to ſuch a one, *exiſten' un' juſtic'*, *&c.* which muſt be intended that he was one at that time, and was ſufficient without ſaying *adtunc*.

[t] Stra. 711.

And with regard to the *diſtrict* for which the magiſtrate acts, it ſeems the Court will rather preſume the ſtatute to have meant more than it literally expreſſes, than give it ſuch a conſtruction as ſhall wholly defeat it. Therefore, it has been adjudged, that the authority given by ſtat. 43 Eliz. c. 7. (againſt unlawful breaking and cutting hedges, &c.) to convict before any juſtice, &c. *of a county, city, or town corporate*, where the offence ſhall be committed, is conſtructively given to any juſtice,

juſtice, &c. of any *place, diſtrict, or liberty* in any county where the offence ſhall be committed [u].

[u] E. 23 G. III. Cald. 302. R. v. Stephens.

Fifthly, *The name of the offender.*

Sixthly, *The time of committing the offence* ought to be ſtated, for the ſame reaſon that renders the time of taking the information material.

In the caſe of the *Queen v. Pullen & al'*. [v] which, though not law as to the two firſt points ſaid to have been determined, ſeems right as to this, it was held, that the time of the conviction, and alſo of the offence, ought to appear; the reaſon of which (the reporter adds) ſeems to be, becauſe it muſt be on a proſecution within ſix months after the offence committed. This doctrine is confirmed in Chandler's caſe, as ſtated in three different books.

[v] Salk. 369.

But a queſtion is made there, whether it be ſufficient to ſtate the offence to have been committed *between ſuch a day and ſuch a day:* for if the ſpace between the firſt day mentioned and the day of giving the information, be leſs than the time limited by the ſtatute for proſecuting the offence, the objection of

uncertainty in that reſpect is taken away. But another objection occurs, namely, that the defendant, if this method be purſued, muſt loſe the power he might otherwiſe have of proving an alibi; unleſs, indeed, the *evidence* confine it to a particular day.

The caſes, however, are expreſs, that the particular day need not be mentioned in the *information* (nor, as will be afterwards ſeen, in the *evidence*) provided it mentions the days between which the fact is charged to have been committed.

In the caſe of the *King v. Chandler*[x], the court held that "*inter ſuch and ſuch a* "*day he killed three deer*, is good; for if a day "certain were alledged, the informer is not tied "up to that. Now in theſe caſes he is con- "fined to give evidence of a killing within "theſe days; ſo that it is more certain and "better for the defendant."

[x] As in Salk. 378.

Mr. Serj. Carthew, in his report of the ſame caſe, ſays, the conviction and another there mentioned, were affirmed, and adds, "the objection which ſeemed to be of moſt "weight, was the firſt which was made in "Chandler's caſe, viz. that *the fact was not* "*laid to be done on any certain day*," &c. To which it was anſwered, "that all informations

"in

" in the Exchequer were in this form; and
" ſeveral precedents were cited in this point."

Lord Raymond[7] ſtates the ſame caſe thus: [7] P. 582.

" As to the firſt exception, that it was ſaid
" that the defendant, between the firſt of
" July and the tenth of September, killed ten
" deer, without ſhewing the particular days
" upon which they were killed, and ſo ge-
" neral and uncertain a deſcription of an
" offence is very ſevere, becauſe it drives
" the defendant to give an account of all his
" life, which he cannot poſſibly be prepared
" to do, &c. But to this exception the counſel
" of the other ſide anſwered, that the days
" were not material to be proved; for evi-
" dence may be given of the facts of any
" other days, and therefore the omiſſion of
" ſhewing them will not vitiate; and all that
" is neceſſary to be laid in point of time is,
" that the proſecution appear to have been
" made within a year after the fact com-
" mitted; that the omiſſion of the days is not
" any inconvenience to the defendant, be-
" cauſe if he can ſhew an authority for killing
" ſo many as are charged upon him, in the
" ſame time, it will drive the proſecutor to
" prove more; and if he be charged another
" time, he may aver, that thoſe for the kil-

" ling of which he has been convicted, are " the ſame." This recital of the counſel's argument is put into the mouth of the Court, and ſeems to be a perfect aſſent to them.

[z] 10 Mod. 248.

Alſo, in the *Queen v. Simpſon* [z], which was a conviction for deer ſtealing, the firſt objection was, that no certain time was laid for the commiſſion of the offence, but only that between ſuch a time and ſuch a time the defendant did ſteal *unum cervum.*

In anſwer to this exception, the caſe of the King v. Chandler was cited; and the Court ſaid it had been ſettled in that caſe, that *between ſuch a time and ſuch a time* was ſufficient.

Seventhly, *The place where the offence was committed* muſt be inſerted, that it may appear to be within the juriſdiction of the magiſtrate before whom the information is laid.

[a] Ld. Raym. 1220.

In the caſe of the *Queen v. Highmore* [a] the defendant was convicted before the Lord Mayor of London, upon 16 and 17 Car. II.

* This objection ſeems, though not expreſsly ſaid ſo, to apply to the information; which appears both by the term *laid*, and from the fourth objection; which is expreſsly applied to the evidence, and would otherwiſe be a mere repetition of this.

c. 2. for ſelling coals contrary to 16 and 17 Car. II. c. 2. viz. leſs than 36 buſhels to the chaldron, &c. And the conviction being removed into the King's Bench by certiorari, it was quaſhed, becauſe there was no place mentioned where the coals were ſold; which ought to have been, in regard that the power of the Lord Mayor is only in caſe of coals expoſed to ſale in the city of London, or liberties thereof. If the coals were expoſed to ſale in any other county, then the power of convicting is in the juſtices of the peace of that reſpective county. And therefore the Lord Mayor, to have intitled himſelf to a juriſdiction, ought to have ſhewn in the conviction that the coals were ſold within the city of London or the liberties thereof, and for want of that, the conviction is naught.

Eighthly, The Information muſt contain "*an exact deſcription of the offence*;" which, in order to give the juſtice a juriſdiction, muſt appear to be within both the letter and ſpirit of the ſtatute that creates it; and which muſt be exactly deſcribed for another reaſon, namely, that the defendant may know what charge he is to anſwer.

The beſt *general* rule for deſcribing the offence

offence is, to purſue exactly the words of the ſtatute. But this rule admits of many modifications and exceptions. In ſome inſtances (as will afterwards appear) more than this has been deemed neceſſary, in order to exclude, upon record, the poſſibility of any legal exemption from the penalty.

The following caſes go to prove the rule, that "any leſs preciſe deſcription than what "is contained in the ſtatute is inſufficient." The firſt was *Rex v. Llewellin*[b] *. Conviction for a gun contrary to 33 H. VIII. "The "conviction was for *having a gun* in his houſe. "The ſtatute is, *uſe to keep in his or her houſe*: "and perhaps it might be lent him. The "words of the ſtatute (ſaid the Court) ought "to be purſued. The conviction was there-"fore quaſhed." In the next, which was *Regina v. Moore*[c], "a * conviction againſt the "defendant for killing deer was removed into "the Court of K. B. by certiorari, and was "quaſhed, becauſe it ſaid only that he killed "deer in *quodam loco* where they had been uſu-

[b] Trin. 1 W. & M. 1 Show. 48.

[c] Trin. 1 An. Ld. Raym. 791.

* Note, the 16 G. III. c. 30. preſcribes a ſummary form of conviction in this caſe, and repeals all former ſtatutes on the ſubject.

" ally kept, and did not ſay incloſed." Alſo in the caſe of *Rex v. Mallinſon*,[d] a conviction, intended to be on 22 and 23 Car. II. c. 25. ſ. 7. for " unlawfully taking " and killing ten fiſh, &c." was quaſhed, becauſe it did not ſay, conformably to the ſeventh ſection, that the defendant took the fiſh *without the conſent of the owner of the water*; but it only ſaid that the defendant, " not being a maker or ſeller of any nets, " &c. or other engines for the taking of " fiſh, nor being owner of any river or " fiſhery, nor being a fiſherman lawfully " authorized to fiſh with nets in navigable rivers or waters, nor an apprentice to " any ſuch fiſherman, *nor in any wiſe whatſoever impowered, authorized, or qualified* by " the laws of this realm, either to take, kill, " or deſtroy any ſort of fiſh, &c. or other " game whatſoever, *either for himſelf or any other perſon* or perſons whomſoever, nor " to keep or uſe any greyhound, ſetting dog, " hays, lurchers, tunnels, nets, or any other " engine to kill and deſtroy the game, on " 27th day of June, 31 G. I. at G. aforeſaid, " within, &c. did with a certain net unlawfully kill and take ten fiſh, that is to ſay, ten " trouts,

[d] M. 32 G. II. 2 Burr. 679.

" trouts, contrary to the form of the ſtatute, " &c." Lord Mansfield there ſays, " The " offence provided againſt by the act of 22 and " 23. Car. II c. 25. is *ſtealing* fiſh; taking " it *without the licenſe or conſent of the owner.* " The juriſdiction given to the juſtice of " peace is over every ſuch offender or of- " fenders in ſtealing, taking, or killing fiſh. " Taking and killing in the intention of this " ſtatute mean *ſtealing.* But this man is not " convicted of *any* offence; for he is not " charged with *ſtealing,* nor even with taking " and killing the fiſh of *another* perſon, or *in* " *another* perſon's pond. The offence ſpe- " cified in the ſtatute is taking it " without " the licence or conſent of the lord or owner " of the water;" but it may be *his own* pond, " and *his own* fiſh, for any thing that appears " to the contrary in the preſent caſe." The other judges ſpoke to the ſame effect. The conviction was therefore quaſhed.

To this head (of preciſion in ſtating the offence according to the ſtatute) may be referred the caſe of the *King v. Trelawney,*[e] where a conviction on 22 G. III. c. 47. for inſuring a ticket in the lottery authorized by 25 G. III. was quaſhed, be-

[e] E. 26 G. III. 1 Term. Rep. 222.

cauſe

cauſe the informer did not ſtate that the ticket on which the inſurance was made was a ticket *in the ſtate lottery*.

The general doctrine, that "a deſcription "of the offence in the words of the ſtatute is "ſufficient," is laid down by Lord Chief Juſtice Holt in Chandler's caſe (already cited); in which he ſays, "It is ſufficient for "the juſtices, in the deſcription of the of-"fence, to purſue the words of the ſtatute," &c. And he adds: "All that is neceſſary "in theſe caſes of new offences made by "new ſtatutes, and in new ſummary methods "of conviction by them, is to ſhew ſuch a "fact as is within the ſtatute, and to de-"ſcribe it as the ſtatute wills." And in the *King againſt Speed*[f], he ſays, "It is enough "to lay the fact in the words of the act of "parliament."

[f] Lord Raym. 583.

Alſo where a ſtatute expreſſes more offences than one in the disjunctive, though in the ſame ſentence, you may convict on either; as the reaſon of the thing, and the following determinations, clearly ſhew: In *Rex v. Filer*[g], the conviction was

[g] Hill. 8. G. I. Stra. 496.

was on 5 An. c. 14. for keeping a lurcher to deſtroy game, not being qualified. "Mr. "Eyre excepted, that it is not ſhewn he "*made uſe* of the dog to deſtroy game; and "it may be he only kept it for a gentleman "who was qualified, it being common to put "out dogs in that manner." *Sed per Curiam*, "The ſtatute 5 An. c. 14. is in the disjunc-"tive, *keep or uſe*, ſo that the bare keeping "a lurcher is an offence. And ſo it was "determined in the caſe of the *King v.* "*King*, Paſch. 3 Geo. B. R. which was a "conviction for keeping a gun; and it was "not doubted by the Court whether "the "keeping was not enough to be ſhewn," "the only queſtion they made was, whether "a gun was ſuch an engine as is within that "ſtatute: and in that caſe a difference was "taken as to keeping a dog, which could "only be to deſtroy the game, and the keep-"ing a gun, which a man might do for the "defence of his houſe." The conviction was confirmed *.

In

* It is obſervable, that although the point determined in this caſe has ſince been repeatedly held to be law, there ſeems to be an inaccuracy in the manner of ſtating the caſe therein cited; for if it be law (as has been determined

In the caſe of *R. v. Chipp* [h], the defendant was convicted upon the ſtatute 4 & 5 W. & M. c. 23. for deſtroying game, not being a perſon duly qualified, Filmer, for defendant, took ſeveral exceptions to the conviction. 1. That the information, which was ſet forth in the conviction, was inſufficient to warrant the conviction; for the information only recited that he was an *inferior tradeſman*, but did not ſhew that he had *waſted his ſubſtance*, or that he was a *diſſolute perſon*, which are the words of the ſtatute; and therefore it did not appear by this conviction that the defendant was ſuch a perſon as was intended by the ſtatute; for he might be an inferior tradeſman, and yet have a ſufficient eſtate to qualify him to hunt, &c.

[h] 1 Stra. 711. cited ante, 20.

But the Court overruled all the exceptions; and to the firſt they ſaid, that the ſtatute was in the disjunctive, viz. *inferior*

determined in *R. v. Gardner*, 2 Stra. 1098. alſo in *Wingfield v. Stratford & al.* Wils. 315.) that a gun is not an inſtrument the *keeping alone* of which is penal, and that it differs from nets and dogs, which can only be kept for an ill purpoſe, then "*the keeping* is not "enough to be ſhewn." And indeed that is the expreſs adjudication in *R. v. Gardner*.

tradeſman

tradeſman or *diſſolute perſon*; and therefore ſaying that the defendant was *either* was ſufficient *.

In ſome caſes, however, you muſt ſtate the offence and its circumſtances more fully than the ſtatute on which the conviction is founded deſcribes it.

Thus, what is ſtrongly and neceſſarily implied in a ſtatute, though not expreſſed in terms, ſhould be expreſſed in a conviction; as, in the above cited caſe of the *King v. Mallinſon*, the Court ſeemed to think, that as the *taking and killing* mentioned in the ſtatute meant *ſtealing*, *that*, or ſomething equivalent thereto, ſhould have been expreſſed.

* As to the ſecond exception, (which was, that it is not ſet forth that defendant did *unlawfully* hunt) the Court ſaid, that the ſtatutes forbid ſuch a perſon as the defendant to hunt at all, and made it criminal for ſuch perſon *to hunt* generally. And in this ſtatute there is no diſtinction betwixt *lawful* and *unlawful* hunting, as there is in the ſtatute againſt deer-ſtealers: and they agreed, that in a conviction for deer-ſtealing it muſt be ſet forth that the defendant did *unlawfully hunt*; but in the preſent caſe there need not, becauſe there is no ſuch diſtinction.

Alſo the number and nature of things taken, deſtroyed, damaged, or embezzled (as the caſe may be) ſhould be expreſſed; more eſpecially wherever the ſtatute directs any recompenſe to be given to the party injured.

The *Queen v. Burnaby* [1] was a conviction upon the ſtatute 43 Eliz. c. 7. ſ. 1. againſt robbing of orchards, cutting of trees, &c. The conviction ſet forth, that whereas complaint hath been made to the juſtice of peace by Sir Robert Barnard, of Brampton, in the county of Huntingdon, that the defendant, in the night time, cut down divers lime trees of the ſaid Sir Robert Barnard, at Brampton aforeſaid, &c. the juſtice of peace awarded him to pay ſo much damages, &c. On removal by certiorari into the King's Bench, the ſecond objection was, that the conviction was uncertain, in not mentioning the number of the trees; which ſhould have been done as a meaſure for the juſtice to give damages by.

[1] Lord Raym. 900.

Holt Chief Juſtice: "Playter's caſe, in "5 Coke 34. is expreſs, that in treſpaſſes the "number and nature of things ought to be "mentioned; if ſo in treſpaſſes, much more

" in a conviction, where all imaginable cer-
" tainty is requiſite; the ſubject, by this pri-
" vate juriſdiction, executed by a ſingle
" juſtice in a ſummary way, being deprived
" of the privilege and benefit of the common
" law, and of being tried in the face of the
" country by the judgment of his peers.
" Beſides, the ſame reaſon that holds in
" treſpaſſes holds here, viz. the aſcertaining
" the damage which by the ſtatute the juſtice
" is to aſſeſs; and this conviction may be
" pleaded in bar of an action of treſpaſs for
" the ſame treſpaſs."—The conviction was quaſhed *.

Somewhat ſimilar was the caſe of the *King v. Catherall* [k]; which ſtates, that the defendant was convicted on the Kenſington-turnpike act for refuſing to account and pay over the money by him received as collector; and be-

[k] Stra. 900.

* In the above caſe it appeared, there was a claim of property on the defendant; and an attempt was made to put in a plea to the conviction, (on the authority of a caſe in Cro. Eliz. 821.) but the Court, by the opinion of three judges againſt Holt, rejected it; and ſaid the party muſt bring an action, though they admitted that the juſtices have no juriſdiction where property is in queſtion.

ing

ing committed, and a habeas corpus brought, the defendant was diſcharged, and the conviction quaſhed, becauſe no particular ſum was ſpecified, or the times when the money was charged to be received, ſo as to enable him to defend himſelf on a ſecond charge *.

Analogous to this was the rule which obtained as to convictions for curſing and ſwearing, before 19 G. II. c. 21. had preſcribed a ſummary form; viz. that the oaths or curſes ſhould be ſet forth; though it never was held neceſſary to ſet them out as often as defendant could be proved to have ſworn them †.

To the above head, of ſtating the offence more fully than it is deſcribed in the ſtatute on which the conviction is made, ſeems to belong the rule, "That the qualifications and

* Vid. ante. Vid. alſo *Rex v. Gibbs*, 8 Mod. 58. and Stra. 497. on an indictment for ſelling beer without paying the duty; where it was held, that ſaying he ſold *diverſas quantitates*, without ſaying what quantities, was bad.

† Vid. *R. v. Chaveney*, Lord Raym. 1368. *R. v. Sparling*, 1 Stra. 497. *R. v. Popplewell*, *ibidem*, 686. alſo *R. v. Roberts*, Lord Raym. 1376.

" exemptions, which would have been a de-
" fence if poſſeſſed, though contained in a
" different ſtatute, muſt be negatively ſet out,
" if the ſtatute on which you convict mani-
" feſtly refers to it."

Thus, the ſtatute of 22 and 23 Car. II. c. 25. having allowed a number of exemptions from the general prohibition to keep or uſe guns, bows, greyhounds, &c. and the ſtatute of 5 An. c. 14. inflicting a penalty for keeping or uſing any greyhounds, &c. on any perſon *not qualified*, the Court have determined, that on a conviction under the 5 An. you muſt ſtate and negative all the qualifications mentioned in the 22 and 23 of Car. II.

In the earlieſt caſe, indeed, upon the ſtatute of 5 An. viz. *Regina v. Matthews*[1], the Court ſeem to have thought otherwiſe; for they ſay, " if it had been laid generally thus, " that he not being a perſon qualified accord-" ing to law," it had been enough. But as the Court there give an opinion againſt the conviction, though upon another ground, viz. that it attempts to recite the qualifications and miſrecites them, and do not appear

[1] 10th Mod. 27.

to

to have come to any final judgment, this dictum has had no weight in the ſubſequent determinations, by which the contrary doctrine is now fully eſtabliſhed.

The *King v. Marriot* [m] ſeems to be the firſt caſe of this kind in the books, though two preceding determinations of the Court are there cited. In that caſe, as ſtated, it appears as if the objection was made to the information; and yet the Court is ſaid to have quaſhed the conviction, "becauſe the *witneſſes* had taken upon themſelves to judge "of the qualifications."

[m] Stra. 66.

The next caſe is the *King v. John Hill* [n], which ſtates, that "the defendant was convicted by Sir Henry Bateman, a juſtice of "the peace of Middleſex, for unlawfully "keeping a lurcher and a gun to kill and "deſtroy the game, *non exiſtens qualificatus "per leges hujus regni ad hoc faciendum contra "formam ſtatuti in hujuſmodi caſu editi et proviſi.* And this conviction being removed "into the King's Bench by certiorari, was "quaſhed, Saturday, February 12th, 1725, "becauſe it was only averred generally that "he was not qualified, and did not aver that

[n] Lord Raym. 1415.

" the defendant had not the particular quali-
" fications mentioned in the ſtatute, as to de-
" gree, eſtate, &c."

Here it does not appear whether the objection was made to the information or evidence. In the *King v. Maurice Jarvis* [a], it ſeems to have been deemed an objection to both. This was a conviction upon 5 An. c. 14. It was for keeping and uſing one ſetting dog and ſetting net for the deſtruction of the game. The information ſtated, that defendant, at the time and place when, &c. *was not qualified by any laws or ſtatutes of this realm* to kill game, or to *keep or uſe* any nets, dogs, or other engines, for the deſtruction of game, &c. The evidence, after fully proving the fact, was exactly in the ſame words as to the qualification. The adjudication ſays, " It " appears to us, the ſaid juſtices, that the ſaid " M. J. (the defendant) *was not then anywiſe* " *qualified, empowered, licenſed, or authoriſed, by* " *or according to the laws of this realm,* to kill " game; and that the ſaid M. J. is guilty of " the premiſes aforeſaid charged on him in and " by the ſaid information."

[a] 1 Burr. 148.

The firſt objection to this conviction was, that

that the juſtices have not ſhewn they had juriſdiction over this defendant; for they have not ſufficiently ſhewn his defects of qualification.

Lord Mansfield:—" It is now ſettled by " the uniform courſe of authorities, that the " qualifications muſt be all negatively ſet " out, otherwiſe the juſtices have no juriſ- " diction over the perſons killing game, or " keeping dogs or engines for the deſtruction " of it. The Obiter ſaying, in 10th Modern, " if it was a book of better authority than " it is, would ſignify nothing when the *deter-* " *minations* are the other way.

" There is a great difference between the " purvieu of an act of parliament, and a " proviſo in an act of parliament.

" In the caſe of *R. v. Marriott* [p], where [p] 1 Stra. 66.
" the witneſs ſwears only generally, it was " holden inſufficient; and the juſtices, who " convict upon the evidence of the witneſs, " can have no other or further ground to " go upon than what the witneſs ſwears.

" In the caſe of *R. v. Hill* [q], it is the very [q] 2 Lord Raym. 1415.
" point eſtabliſhed and ſettled, that the ge- " neral averment is not ſufficient, and that it " muſt be averred that the defendant had

" not the particular qualifications mentioned
" in the ſtatute, as to degree, eſtate, &c.

[r] Comyns, 525. " In the caſe of *Bluet qui tam v. Needs*[r],
" the *general* averment of defendant's not being
" qualified, was holden to be ſufficient upon
" an *action*, though inſufficient upon a *con-*
" *viction*.

" The diſtinction is obvious between an
" action and a conviction. And there it was
" agreed (and it is given as the reaſon why
" it is not good upon a conviction) that it
" muſt be made out before the juſtice, that
" the party had no ſuch qualifications as the
" law requires, before the juſtice can convict
" him; and the juſtice muſt return, that he
" had no manner of qualification.

" Here the witneſs ſwears only generally
" that the defendant was *not* qualified, &c.
" The juſtices adjudge it generally only.
" The ſtream can go no higher than the
" ſpring-head. So the concluſion which the
" juſtices draw from the teſtimony of the
" witneſs muſt be as general as that teſ-
" timony.

" In the caſe of *R. v. Pickles*, it was laid
" down as a rule, that the want of the par-
" ticular qualifications required by 22 & 23
" Car. II. c. 25. ought to be negatively ſet

" out

" out in convictions, and the only queſtion " there was, whether it was neceſſary to add, " 'nor lord of a manor.' *Exceptio probat* " *regulam*; nor was the general rule at all " doubted or diſputed in that caſe.

" In indictments upon 8 & 9 W. III. " c. 26. for having a coining preſs, every " thing which ſhews that the defendant had " no authority, muſt be negatively ſet out. " And ſo it was done in the indictment of " Bell, which was lately argued before all " the judges.

" I take the point to be fully ſettled by " the conſtant tenor of all the authorities; " and, I think, upon very good reaſon, if " there was need to enter into the reaſon at " large after it has been fully ſettled al- " ready."

Mr. J. Denniſon concurred. He ſaid, " It " was a clear caſe; and that it was fully ſettled " and eſtabliſhed, that, in theſe convictions, " the want of the particular qualifications men- " tioned in the act of 22 & 23 Car. II. ought " to be negatively ſet out, if not, the juſtices " have no juriſdiction to convict defendant as " an offender: and the evidence and adju- " dication ought *both of them* to be, that he

" has

" has not theſe qualifications, which are " ſpecified in that act, nor any of them.

" Indeed, you are not obliged to go fur- " ther than the words of *this* act of par- " liament of 22 & 23 Car. II. and that was " the caſe of *R. v. Pickles*. But, however, in " that caſe the preſent point was eſtabliſhed, " and taken to be indiſputable.

" It is ſaid, that it is ſufficient to lay the " offence in the words of the act of par- " liament. But that is not always ſuffi- " cient: it may be neceſſary to go further.

[b] P. 28 G. II. B. R.

" *R. v. Chapman*[b], about robbing an orchard, " was a caſe where the mere purſuing the " words of the ſtatute was not ſufficient.

" But this point now before us is a ſettled " caſe; and therefore there is no need to " enter into arguments about it."

Mr. J. Foſter concurred. " In negative " acts of parliament the point is fully ſettled " and eſtabliſhed; that the particular qua- " lifications mentioned in the purview of " them muſt be negatively ſpecified in con- " victions made upon them."

By the Court unanimouſly, the conviction was quaſhed.

I have

I have inſerted the arguments of the judges, (as ſtated by Sir James Burrow) in the above caſe, at large, on account of ſome obſervations, which (encouraged by what the Court have thrown out in a ſubſequent caſe) I ſhall venture to make on them.

It ſeems highly neceſſary, in order to ſettle the law reſpecting convictions with perfect preciſion, to ſtate accurately to which *branch* of them each caſe reſpectively applies. This in the older caſes is often omitted, and cannot always be gueſſed with ſufficient certainty, from the conviction at large, or a clear abſtract of it, not being given in the report. In the later reports[t] we are not, in general, under the ſame difficulty; and in the ſtate of the preſent caſe, it appears clearly that the *information* ſtated only generally that the defendant was not qualified, without reciting the qualifications of the 22d and 23d of Car. II. As therefore the authority by which the juſtice takes cognizance of the offence muſt appear upon the *information*, or (in other words) as ſuch a complaint muſt be laid before him as warrants his proceeding upon

[t] From Sir J. Burrow, downwards.

upon it, the proper place for negativing all the qualifications, (any of which, it has been held, would take away the juriſdiction of the juſtice) ſeems to be the *information*. That it is neceſſary in the information *alone*, appears reaſonable, from the following conſiderations:

Firſt, It cannot be reaſonably required in the *evidence*; becauſe it is not the evidence, but the information, that *gives juriſdiction* to the juſtice; which juriſdiction cannot be again taken away, unleſs the defendant ſhall prove himſelf to be poſſeſſed of ſome of the qualifications ſpecified in the ſtatute, the onus of which proof ſeems to lie upon him, as it is impoſſible, in point of fact, for any witneſs to negative all the qualifications; he cannot, at moſt, go further than his belief; which, with full proof of the *fact* that conſtitutes the offence, muſt, in reaſon, be ſufficient to put the defendant upon proving his qualification, unleſs he thinks fit to deny the *facts*. It is not, therefore, reaſonable to require that the juſtice ſhould ſtate upon his proceedings that which cannot, or ought not, to have, paſſed. This reaſoning is ſupported by an obſervation of the Court in a late caſe

of *R. v. Crowther*[u], though they had not then an opportunity of expreſsly determining the point.

[u] H. 26 G. III. Term. Rep. 1 vol. 125.

Secondly, With regard alſo to the adjudication, or, as it is called in this treatiſe, the judgment, there ſeems to be no reaſon why all the qualifications ſhould be expreſsly negatived there any more than in the evidence. The adjudication is no more in ſubſtance than a declaration, that the facts alledged in the information are proved to the ſatisfaction of the juſtice; and when it ſays the defendant "is convicted of the ſaid of-"fence," it refers to the offence charged in the information, as no proof of any *other* offence could have been admitted on the hearing of that complaint. It muſt therefore be equally unneceſſary to repeat and negative all theſe qualifications, as it would be to repeat all the other facts alledged in the information, the general terms of the adjudication extending equally to all.

For the above reaſons it is preſumed, that, although the caſe of the *King v. Jarvis* has fully eſtabliſhed the rule of ſetting out the qualifi-

qualifications negatively in the *information*, yet as what is there ſaid to have been thrown out relating to the *evidence* and *adjudication*, amounts to no more than an obiter dictum, a Court would now, in conformity to what is ſaid in *R. v. Crowther*, be inclined to confine the rule to the information alone.

It is, however, deemed ſo neceſſary in the *information*, that if the qualifications are omitted to be ſet out there, the evidence will not ſupply the defect. This was held in the *King v. Wheatman*[v], in which caſe the qualifications were negatived in the evidence, but not in the information.

[v] Dougl. 331, 2.

The difference alluded to, between exemptions or qualifications in the *purview* (or enacting clauſes) of a ſtatute, and thoſe in a *proviſo*, is, that the latter need not be ſet out and negatived; as the following caſes ſeem clearly to prove: viz. the *King v. Ford*[w], which was a conviction on 3 Car. I. cap. 3. for keeping an alehouſe without licence. Forteſcue objected, that in the act there is a proviſo to exempt perſons who have been puniſhed by the former law of 5 and 6 Ed. VI. cap. 25.

[w] Trin. 9 Geo. I. Stra. 555.

cap. 25. and therefore it ſhould have been ſaid, he had not been proceeded againſt upon that act.

Sed per Curiam, "That coming in by way "of proviſo, he ſhould have inſiſted on it in "his defence. It appears he was aſked "what he had to ſay, and therefore we may "reaſonably preſume he had no ſuch defence "to make." The conviction was confirmed. The next caſe on this point was the *King v. Bryan*[x]. Defendant was convicted on the Gin Act; and an exception was taken, that there was no averment, that it was not ſold "to be uſed in medicine:" and the caſes on the Game Act were mentioned, where in convictions it is neceſſary to exclude all the qualifications for killing game.

[x] Mich. 12 G. II. Stra. 1101.

Per Curiam, "This is brought within the "general enacting clauſe; and the true diſ-"tinction is, where the extenuation comes in "by way of proviſo or exception." The conviction was confirmed. The ſame has been held where a *ſubſequent* ſtatute makes an exception to a former one; for it is incumbent on the defendant to ſhew, by way of defence,

defence, that he comes within ſuch exception[y].

[y] Per Cur. in R. v. Hall. 1 Trin. 26 G. III. 1 Term. Rep. 320.

It is alſo now ſettled (notwithſtanding what is ſuppoſed to have been ſaid by the Court in *Reg. v. Matthews* above-mentioned) that in thoſe caſes where the informer need not negative *any* of the exceptions, and negatives *ſome* of them, *that* part of the information will be rejected as ſurpluſage, and the reſt holden good. This was one of the points in the caſe of *Rex. v. Hall*, laſt cited, where the conviction was on 22 Car. II. c. 1. (for having an unlawful religious meeting in his houſe) and the information negatived, unneceſſarily, ſome of the exceptions in the ſtatute of 1 W. & M. c. 11. but not all of them. Yet the Court, on the above principle, affirmed the conviction.

Though ſo much exactneſs and preciſion is required in deſcribing the offence; yet where a conviction expreſſes a number of offences conſiſting of the ſame fact repeated, the words that charge the fact to be an offence need not be repeated as many times as the fact is alledged to have been committed. For inſtance, in *R. v. Speed*[z], exception was taken

[z] Lord Raym. 583.

to

to a conviction for deer-ſtealing, that the facts were laid at ſeveral diſtinct days, and then at the end comes *illicite occidit*; and ſo it did not extend to them all. But *per Curiam*, "It is one entire ſentence, and then *illicite* "*occidit* will extend to every one of them as "much as if it had been repeated particu-"larly."

It ſhould alſo ſeem, that where a penal ſtatute varies the quantum of the penalty according to the circumſtances under which the offence was committed (unleſs where ſuch circumſtances are of the eſſence of the offence), you need not expreſsly ſtate under which of the circumſtances it happened; eſpecially if you go only for the leſſer penalty. Thus, in a conviction on the Auction Act [a], for putting goods up and ſelling them by auction without taking out a licence, it was not expreſsly ſtated whether the offence was committed within or without the bills of mortality, though the act impoſes a greater penalty on perſons trading in that manner within the bills than without; but the offence was laid to be done "*at Reading, in the county* "*of Berks*;" which, Lord Mansfield ſaid,

[a] 17 G. III. c. 50. R. v. Vaſey.

ſufficiently appeared to be without the bills of mortality, though not expreſsly averred to be ſo *.

Another principle ſeems to be, that the party againſt whom the offence was committed (ſuppoſe an officer in the execution of his duty) need not be ſtated to have taken every ſtep required by the ſtatute to make his proceedings regular and legal; and that if thoſe proceedings are to be varied according to time, place, &c. it is not (on that account) neceſſary that the exact circumſtances of time, place, &c. ſhould be ſtated. Of this kind was the caſe of the *King v. Theed* [b], which was a conviction for obſtructing an exciſe officer in coming to weigh candles. And it was objected, that by 8 An. c. 9. the officer has power to enter by day or night, and if by night, then in the preſence of a conſtable; and here it is not ſaid whether it was by day or night: it might be by night without a conſtable, and then it was lawful for the defendant to obſtruct. *Sed per Curiam*, That ſhould have been ſhown by the defend-

[b] Sura. 608.

* Vid. Precedents.

ant,

ant, and then he would not have been convicted. It is enough that this conviction does not appear to be wrong. We will presume the entry to have been in the day, else it would have been said *in nocte ejusdem diei*. The conviction was confirmed.

Of the Summons.

THE SUMMONS immediately follows the INFORMATION; and ſince it cannot, from the reaſon of the thing, be prior in order of time; ſo if the ſummons bear date on an earlier day than the information, it would vitiate the conviction.

In the caſe of *R. v. Kent* [a], "the defendant was convicted for keeping a gun for "deſtroying the game, not being qualified "by law, &c. And the conviction being "removed into the King's Bench by certiorari, was quaſhed, becauſe the information "was ſet out to be exhibited 2d Nov. 1 G. II. "and the witneſs was ſworn, and made his "oath of the truth of the facts contained in "the information the ſaid 2d Nov. 1 G. II. "but the ſummons of the defendant, his appearance and making defence, and the "conviction,

[a] 2 Ld. Raym. 1546.

" conviction, was laid to be the 2d of " October, 1 George II. which was before " the information and examination of the " witneſs, &c."

It ſeems clear that the party ought, in point of fact, to be ſummoned. In the caſe of *Rex v. Venables*[b] (which was the caſe of an order, where the court is leſs ſtrict than in convictions), " the Court were " unanimouſly of opinion, that the party " in theſe caſes ought to be ſummoned in " fact; and if the juſtices proceeded againſt " a perſon without ſummoning him, it would " be a miſdemeanor in them, for which an " information would lie againſt them."

[b] Ld. Raym. 1405. Stra. 630.

Alſo in *Reg. v. Dyer*[c], defendant was convicted on the ſtatute 7 Jac. I. c. 7. for buying embezzled yarn; and it ſet forth, " Whereas complaint had been made unto " A. and B, &c. And whereas the de- " fendant was ſummoned to appear before " them, and by virtue thereof did appear, " *on Tueſday, the 17th day of April*, 1702, " *&c.*" It was objected, that there was no ſuch day as Tueſday, the 17th day of

[c] Salk. 181.

April, 1702; and, indeed, the 17th day was Friday; ſo that the time of the ſummons being impoſſible, it was the ſame thing as if there had been no ſummons, and a ſummons was neceſſary. *Et per Curiam*, "Upon "the complaint the juſtice ought to make "a memorandum and iſſue a ſummons; and "if the party will not appear, or cannot "be found, he may proceed. In the prin-"cipal caſe it is manifeſt there could be "no ſuch day, and therefore he could not "appear thereupon; and when one day is ſet "forth, his appearance on another cannot be "intended." The conviction was quaſhed.

In all the ſubſequent caſes, it ſeems to be underſtood, not only that there muſt be a ſummons in point of fact, but that it muſt be ſhewn upon the conviction. But it has been made a queſtion, whether it be neceſſary that the ſummons ſhould be particularly ſet out; that is, whether the day and place ſhould be ſtated, or whether to ſay (in general terms) that the defendant *was duly ſummoned*, be ſufficient.

The firſt caſe as to this point ſeems to be

Regina v. Green[a]. There the Court was moved to quaſh a conviction upon the ſtatute 8 An. againſt a baker for * ſelling bread. It was objected, that the conviction ſets forth, that being *debite ſummonitus*, and not appearing, they proceeded, &c. whereas natural juſtice requires that the defendant ſhould have had a reaſonable time allowed him for the making his defence.

[a] 10 Mod. 213.

Parker Chief Juſtice:—"This is a material "objection. Not ſaid that he was ſummoned "to appear at a certain time, or any time, or "when the ſummons was made."

Powys Junior:—"To be conſidered, whether, when it is ſaid that he was *debite ſummonitus*, the word *debite* does not import all "reaſonable circumſtances relating to that "ſummons: and I am of opinion it does."

In the above caſe the conviction was quaſhed for another objection †. This point, therefore, was left undecided; and nothing

* This ſeems rather an extraordinary offence as ſtated; but the conviction muſt have been on the 8 An. c. 18. ſ. 3. for not obſerving the aſſize, or ſelling bread of leſs than the due weight. The above act is now repealed by 3 G. II. c. 29.

† Vid. poſt, title Evidence.

can be collected from that part of the caſe, but that it was then conſidered as doubtful.

[a] Stra. 46.

In *R. v. Simpſon*[a], an objection was made to the ſummons, that it does not particularize the place and hour: it is only, *licet ſummonitus fuit ad hoc tempus et hunc locum, ſed defalt' fecit.* Anſwer, The default entered by the juſtices implies the ſummons was to appear at that time and place, for otherwiſe it would not be a default; and when the legiſlature has given a power, we will preſume the juſtices purſue that power, unleſs the contrary appears. If they did not make a proper ſummons, they are puniſhable for it by information.

The laſt-mentioned caſe ſhews, that the day and place of the ſummons being ſhown by reference to the day and place on which the defendant made default is ſufficient; and though there does not ſeem to be any deciſion ſince, that the words *duly ſummoned* would of themſelves be ſufficient; yet, conſidering the inclination ſhewn by the Court of late rather to ſupport convictions than quaſh them, it is probable they would, on principle, deem it ſufficient. However, it is ſafeſt to ſtate the day and place.

If

If the ſummons be particularly ſtated, it ſhould appear to be for a reaſonable time and place: and it ſhould ſeem, by what was ſaid in *R. v. Mallinſon*[f], that a ſummons to appear *immediately on the receipt of that ſummons* would be deemed unreaſonable. This was Mr. Norton's firſt objection to that conviction; though he admits it was not neceſſary to have ſet it out at all; probably meaning, that *duly ſummoned* would have been ſufficient. The Court did not indeed expreſsly decide upon that objection (having quaſhed the conviction for another fault); but Mr. Juſtice Wilmot ſays, "This "conviction is bad for the faults that have "been mentioned, and for a great many "others; it is bad throughout;" which ſeems to imply, that he thought this objection had weight.

[f] Ante, 2 Burr. 679.

The defendant's appearance cures any defect in the ſummons, or even the total want of one *.

* Vid. poſt, title Appearance.

OF

OF THE
Appearance or Non-Appearance
OF
DEFENDANT.

IT muſt be ſtated, whether the defendant appeared, or not; for only in the caſe of his not appearing is the ſummons material; the following determinations having ſettled that appearance cures every defect of ſummons.

In the caſe of *Reg. v. Barret*[a] (which was a conviction for deer ſtealing) the third objection was, that there is no due ſummons. Non allocatur, the defendant having appeared. In a mandamus it muſt appear that the party was ſummoned; becauſe he is to loſe his freehold, and it is a courſe of proceeding by the common law, wherein no appeal lies; otherwiſe in convictions, which

[a] Salk. 383.

are

are proceedings by ſtatute, in which the defendant appeared, and that appearance will aid the want of ſummons. So it was held in Peache's caſe; and all the precedents are ſo.

The caſe of *R. v. Johnſon*[b] was conviction on 5 An. for keeping a gun not being qualified; and exception was taken by Fazakerley, that here was not a reaſonable ſummons, for it was made on 5th October to appear the ſame day, which might be impoſſible, on account of diſtance, or the ſummons being ſerved late, and his witneſſes might not be got together on ſo ſhort a warning: then, it is to appear apud paroch' prædict', whereas there are two pariſhes mentioned before; ſo the man may have gone to one whilſt they were convicting him at the other.

[b] Stra. 261.

Wearg contra. The defendant appeared at the time, and made defence; ſo that cures all defects in the ſummons. Et per Curiam, The anſwer is right.

R. v. Aikin[c]. The defendant had been convicted on the Hawkers and Pedlars Act. Sir Fletcher Norton objected to the conviction: for, 1ſt, He was not ſummoned to

[c] 3 Burr. 1785.

anſwer to the charge; at leaſt it does not appear that he was ſummoned. The Court were unanimouſly of opinion, that theſe objections were not well founded; for 1ſt, He did appear, and denied the guilt; but did not deſire further time to produce his evidence, or to prove his innocence. He ſeems therefore to have waived any further defence. Conviction affirmed.

It was formerly made a queſtion, whether the juſtice, having ſummoned the defendant, might, if he did not appear, proceed to hear the evidence, and convict him, in caſes where the ſtatute does not expreſsly give ſuch a power; but ſince the caſe of *R. v. Simpſon*[d], it ſeems perfectly ſettled that he may.

[d] 1 Sess. 44.

In that caſe which was a conviction for deer ſtealing*, it was objected, that as no appeal lies in this caſe, the juſtices ſhould not have proceeded in the abſence of the party, eſpecially where it may end in a corporal puniſhment, as it may do here, for want of a diſtreſs. Parker, Ch. J. delivered the reſolution of the Court. "We are all of opi-" nion the offender may be convicted with-

* Vid. ſupra, title Summons.

" out

" out appearing. The ſtatute is ſilent as " to the method of proceeding; and the law " of England, it is true, in point of natural " juſtice, always requires the party charged " with any offence to be heard before he be " condemned in judgment; but that rule " muſt have this exception, unleſs it is by " his own default; were it otherwiſe, every " criminal might avoid conviction. The " law being ſo, the magiſtrate is bound to " give ſome opportunity to the party to ap- " pear; and if, upon ſuch a notice, he neither " comes nor ſends a ſufficient excuſe, the " magiſtrate may proceed to judgment. If " this was not to be allowed, the conſe- " quence would be, that the offender would " eſcape unpuniſhed, becauſe he would never " appear purpoſely to be convicted; and that " would be to make the execution of the law " depend on the will of the offender." He goes on more at large to prove that " pro- " ceedings againſt a man in his abſence are " not againſt the common law;" but the point being ſo thoroughly ſettled, it is need- leſs to go further with the argument.

OF

OF THE
Defence or Confeſſion.

IF the defendant appear, he ſhould be aſked what he has to ſay in his defence; and that defence (if he makes any) or his confeſſion (if he confeſſes) muſt be ſtated in the conviction.

This proceſs ſeems the moſt regular; becauſe, if he confeſſes (which though not probable is poſſible) it is needleſs to hear, and conſequently to ſtate, the evidence againſt him; though the evidence may, and in ſome precedents is, ſtated firſt.

It has accordingly been determined, that the defendant's confeſſion, or "pleading "guilty" cures the objection that the evidence was not given in his preſence, which otherwiſe has, in many caſes, been held fatal[a].

[a] R. v. Samuel Hall. Trin. 26 G. III. 3 Term. Rep. 320.

On the ſame principle, if the defendant confeſſes the charge, the juſtice may convict without

without going into any evidence againſt him; and it has been determined he may do ſo, even where the ſtatute ſays nothing of confeſſion, but only directs him to convict by the oath of a witneſs or witneſſes.

In the caſe of *R. v. Gage*[b], the defendant was convicted on 5 An. c. 14. for uſing a greyhound in killing four hares*, per quod, he forfeited 20l. [b] Stra. 546.

Reeve excepted to the conviction, that the act of parliament had only given the juſtices juriſdiction to convict upon the oath of one or more credible witneſſes, whereas this was upon his own confeſſion, which, he inſiſted, the juſtices had no power to take; and it follows in the act, that the perſon *ſo* convicted ſhall forfeit, which word *ſo* is relative to the former method, by oath of one or more credible witneſſes.

Sed per Curiam (præter Eyre) "The con-"viction muſt be confirmed. The intent "of mentioning the oath of one witneſs was "only to direct the juſtices that they ſhould

* Qu. Whether he ought to have been convicted in more than one penalty?—and vid. Cripps v. Durden, poſt, title Judgment.

"not

" not convict on leſs evidence. Suppoſe the " confeſſion had not been before the juſtices, " but before two witneſſes, who had ſworn it; " *that* would be convicting him on the oaths " of witneſſes, and yet the evidence would " not be ſo ſtrong as this. By the civil law " confeſſion is eſteemed the higheſt evidence, " and in ſome caſes, though there are one " hundred witneſſes, the party is tortured to " confeſs. Here the juſtices had a better " evidence than the evidence of any ſingle " witneſs, and it is a monſtrous thing to ſay, " that a better ſort of evidence ſhall not do."

But the confeſſion muſt be of ſuch facts as fully conſtitute an offence; otherwiſe it will not ſupply any defect of evidence.

[c] 1 Burr. 609.

[d] 8 & 9 W. III. c. 25. 9 & 10 W. III. c. 27. & 3 & 4 An. c. 4.

The caſe of *R. v. Little* [c] was upon a conviction on the Hawkers and Pedlars Acts [d]. The information ſtated that defendant, *on ſuch a day, at ſuch a place* " *was found offering to* " *ſale ſilk handkerchiefs, and trading as a haw-* " *ker, pedlar, or petty chapman; and that the* " *ſaid T. L.* (the defendant) *did then and there* " *offer to ſell a parcel of ſilk handkerchiefs.*" It then ſtated that defendant did not, though required ſo to do, produce any licence, as the law

law in that caſe provided directs, to qualify him for his *ſaid trading*; that defendant being brought before the juſtice and being preſent, and having heard the information read, &c. is aſked, &c. "if he hath any thing to ſay, "or can ſay any thing why he, the ſaid T. L. "ſhould not be convicted *of the ſaid offence* "*ſo charged upon him in form aforeſaid* ac- "cording to the form, &c." "Whereupon "he the ſaid T. L. doth now here freely and "voluntarily *confeſs* before me the ſaid juſtice, "that he the ſaid T. L. *did offer to ſell ſilk* "*handkerchiefs to the ſaid T. P. in ſuch manner* "*as is mentioned in the ſaid information.*" It then ſtated, that he was required by the juſtice to produce a licence, &c. *to travel or trade*, purſuant to the ſtatute; that he did not produce any ſuch licence, or any licence, &c. and did not pretend or alledge that he was the real worker or maker of the goods, or the child, apprentice, agent, or ſervant of any ſuch worker, &c. nor alledge any other matter in his defence. The adjudication was, that ſaid T. L. *is a hawker* within the true intent, &c.; that it manifeſtly appeared to the juſtice that the ſaid *T. L. is guilty of the offence in the ſaid information above laid to his charge in manner and form*, &c.: therefore that it is

adjudged by him the ſaid juſtice, that the ſaid T. L. be, and he is convicted *of the ſaid premiſes, in the ſaid information ſpecified*, above laid to his charge, according to the form of the ſtatute, &c. and the ſaid T. L. forfeit the ſum of 12l. for *his ſaid offence*, to be levied and paid according to the form, &c.

Lord Mansfield.—"The act of 3 & 4 An. "refers to the deſcriptions in thoſe of W. III. "A ſingle act of ſelling a parcel of ſilk hand-"kerchiefs to a particular perſon is not a "proof that he was ſuch a hawker, pedlar, or "petty chapman, as ought to take out a li-"cence by theſe acts of parliament. Now "it is certainly of the eſſence of the crime of "not producing a licence, that he muſt be "ſuch a perſon as ought to take out a licence. "And the confeſſion is only of the fact that "he ſold the handkerchiefs to T. P. not that "he traded as a hawker, &c."

He then lays down the ſtrict principle in deciding upon convictions[e], and adds, "I do "not ſay that it is neceſſary to define exactly "what a hawker, pedlar, or petty chapman, "*is*, but it is neceſſary to alledge and ſhew "that he ſold the goods or traded *as one*."

[e] Vid. Ante.

The

The other judges concurred *.

Per Cur. unanimouſly. Conviction quaſhed.

If the defendant, when put on his defence, ſets up a claim of right to the thing he is accuſed of taking or deſtroying, and there is any pretence or colour for ſuch right, the juſtice ought to acquit him. This is laid down by Lord Ch. J. Holt in *R. v. Speed*[f]. By which it ſhould ſeem, that if ſuch a colourable right appeared upon the defence (as ſtated in the conviction) ſuch conviction would be quaſhed.

[f] Ld. Raym. 583.

If the defendant denies the fact charged upon him, or pleads not guilty, the next thing to be ſtated is

* Vide the Report.

The Evidence.

IT ſhould contain, as well as the information, the day and place where it was taken, the name of the offender, and the time when the offence was commited, ſubject to the qualification above ſtated, viz. that it may be ſufficient to fix it between ſuch and ſuch a day. For in the *Queen v. Simpſon**, the fourth objection was, that though in the *information* the offence may be ſaid to be committed between ſuch a time and ſuch a time, yet the *proof* ought to be certain. Now the oath is no more than that the defendant did, within ſuch a time and ſuch a time, ſteal *unum cervum*; ſo that the time is left as uncertain in the evidence as in the information. And then *non conſtat*, the evidence relates to the ſame deer. It ſhould have been *cervum in informatione prædict' mentionat'*. But to this

* Quod vid. ante, tit. Information.

it

it was anſwered, in behalf of the conviction, that it was next to impoſſible for the witneſs to be able to ſwear to the very day, and not to be intended that there were more deer ſtolen than one.

Chief Juſtice Parker ſaid, there was nothing in the objection as to the evidence; and Eyre Juſtice ſaid, it had been ſettled in Chandler's caſe, that between ſuch a day and ſuch a day was well enough.—The conviction was held good.

It muſt alſo contain, 1ſt, The name of the witneſs, that he may appear to be a different perſon from the informer; as the ſtatutes generally give the latter a part of the penalty.

In the caſe of *R. v. Stone*[a], the defendant was convicted by a juſtice of peace of Dorſetſhire for killing a fallow deer of the king's in Cranbourne Chace; and the conviction was quaſhed, becauſe the informer was the witneſs; divers convictions having been quaſhed for the ſame reaſon before.

[a] Ld. Raym. 1545.

2dly, The evidence muſt be ſtated to have been given in the preſence of the de-

ſendant, that it may appear he has had the benefit of a croſs examination.

[b] *R. v. Baker.* 2 Stra. 1240.

In the firſt caſe, indeed [b], it ſeems to have been determined, that ſtating the evidence to have been read to him was ſufficient. It was a conviction for keeping a lottery office contrary to a late ſtatute; and ſtated, that "Jones gave "information before two juſtices, and Mar-"tindale, a credible witneſs, proved the fact; "whereupon due ſummons iſſued, and the "defendant appeared, and the ſaid evidence "thereupon given being now here *read unto* "*and fully underſtood by* the ſaid Francis Baker, "he is aſked what he has to ſay."

"I (ſays Sir J. Strange) objected, that it "ſhould appear the evidence was given *in* "*the hearing* of the defendant; whereas it was "only read, whereby the defendant loſes the "benefit of a croſs examination; but the "Court held it well enough, for all is a hiſtory "in the preſent tenſe, and ſuppoſed to paſs at "the ſame time; and if it had been *heard*, "it might be ſaid to be only *hearing it read*. "In theſe caſes it is enough that it does not "appear to be wrong; and it is laid to be "fully underſtood by him." (Then they quote

quote the caſe of Theed on the Candle Act.) —The conviction was confirmed.

Although the authority of the foregoing caſe ſeems not to have been denied in the ſubſequent determinations; yet, ſo far as the reporter's ſtatement enables us to judge, the preſumption that the whole tranſaction paſſed at the ſame time ſeems unwarranted by the facts ſet forth; for the caſe ſtating the evidence immediately after the information, *then* the ſummons, *then* the defendant's appearance, and the *reading* of the evidence to him, ſeem to import the direct contrary. And as for its being all in the preſent tenſe, that will be found the general language of convictions, whether the whole paſſes on the ſame day or not; and was by ſome ſuppoſed to be neceſſary, till the caſe of *R. v. Hall*[c] decided that it was not ſo in ſtating the information. It would ſurely, therefore, be better to ſuppoſe there is ſome inaccuracy in the ſtatement of the caſe of *R. v. Baker* (which ſeems to be a looſe one), than that the Court decided on a preſumption directly contrary to the facts.

[c] 1 Term, Rep. 320.

The next caſe on the ſubject ſeems to be *R. v. Vipont & al.*[d], in which the conviction

[d] 2 Burr. 1163.

was in the following terms: "Borough of "Derby, to wit.—Be it remembered, that "on, &c. at, &c. T. E. of the ſaid borough, "hoſier and woolcomber, cometh before us "J. B. Eſq. mayor of the ſaid borough, and "J. S. gentleman, two of his majeſty's juſtices "of the peace of and for the ſaid borough, "and upon his oath *depoſed*, that Joſeph Vi- "pont, &c. (the other defendants) journey- "men woolcombers, who for ſome months "next before their leaving his ſervice, as "hereafter is mentioned, were employed by "the ſaid T. E. in the woolcombing buſineſs, "to work for him at reaſonable wages, had "each for himſelf at the ſaid borough con- "feſſed to him, 'that they had in the month "of November laſt paſt, at the ſaid borough, "agreed one amongſt another, and with other "journeymen woolcombers, to raiſe and ad- "vance their wages, and that they would not "work with him, or any other maſter in the "woolcombing buſineſs, unleſs he and they "would advance their wages;' and that the "ſaid T. E. thereupon refuſed ſo to do; and "thereupon all his ſaid journeymen refuſed "to work for him at their former reaſonable "wages, and had left his ſervice. Where- "upon the ſaid Joſeph Vipont, &c. *appearing*

"*before*

" *before us* to anſwer the ſaid charge, and " *having heard the ſaid charge*; and *in the* " *preſence of the ſaid T. E.* being called upon " to ſhew cauſe why they ſhould not be con- " victed for unlawfully entering into ſuch " combinations as aforeſaid, contrary to the " ſtatute in that caſe made and provided; " and having nothing to ſay, nor being able to " make out any thing whereby to defend " themſelves before us touching and con- " cerning the premiſes aforeſaid; there- " upon the ſaid Joſeph Vipont, &c. the " day and year aforeſaid, *by the oath of the* " *ſaid Thomas Eaton*, a credible witneſs, *are* " convicted before us for unlawfully entering " into ſuch combinations as aforeſaid, at the " ſaid borough of Derby, to raiſe and ad- " vance their wages in the woolcombing bu- " ſineſs there, contrary to the acts of par- " liament in that caſe made and provided.— " Given under our hands and ſeals, &c."

This (ſays the reporter) was a conviction on 12 G. I. c. 34. " to prevent unlawful " combinations of workmen employed in the " woollen manufactures, and for better pay- " ment of their wages."

Mr.

Mr. Serjeant Davy, on the behalf of defendants, objected to it,

1ſt, That no evidence is ſtated to have been given *in the preſence of the defendants*; only the charge was * read to them in the preſence of the proſecutor, Thomas Eaton, the witneſs; but it was not made out and proved by him *vivâ voce* before them, though they perſonally appeared, and conſequently had a right of croſs examining the witneſſes face to face; nor indeed is any evidence at all ſet out with ſufficient particularity and preciſeneſs.

Mr. Caldecot, *contra*, (as to the firſt point) cited the above caſe of *R. v. Baker*, and alledged that this conviction is as much in the preſent tenſe as that was.

Lord Mansfield ſaid, the firſt and third objections † were fatal.

" 1ſt, The evidence ought to be taken over " again in a defendant's preſence, unleſs he " confeſſes. Now here they do not confeſs

* The conviction ſays *heard* by them; which might have been heard *given*.

† Vid. the third, poſt, title Judgment.

" before

" before the *juſtices*; and the evidence only
" is, ' that they had before confeſſed this
" combination to the witneſs.' And in the
" caſe of *R. v. Baker*, the Court went upon
" the ſuppoſition that the defendant was pre-
" ſent when the evidence was given, and did
" actually hear it given.

" In a conviction the evidence muſt be ſet
" out, that the Court may judge of it; and it
" muſt be given in the preſence of the de-
" fendant, that he may have an opportunity
" of croſs examining.

Mr. J. Denniſon. " 1ſt, The evidence
" muſt be given in the preſence of the de-
" fendant, that he may have an opportunity
" to croſs examine.

" In the caſe of *R. v. Baker*, nothing wrong
" appeared upon the face of the conviction;
" and therefore the Court ſuppoſed, and took
" it to have been rightly tranſacted."

Mr. J. Wilmot. " 1ſt, The witneſſes
" ought to be examined in the preſence of
" the party accuſed, that he may have the
" benefit of croſs examination. And here it
" appears plainly enough, that Eaton, the

" witneſs

" witneſs againſt theſe defendants, was not ſo " examined in their preſence."

The above conviction was quaſhed upon the third objection alſo *, which was a clear and deciſive one. On this firſt objection Sir James Burrow remarks, that this caſe and that in Strange (notwithſtanding the explanation) ſeem very much alike. We may go further. In the caſe in Strange, ſo far as the conviction is there ſtated, the objection (on this head) ſeems much ſtronger than in the preſent. To any one that reads the ſtatement in Strange, it muſt, one ſhould imagine, ſeem ſcarcely poſſible that the evidence ſhould have been *originally* ſworn in the preſence of the defendant Baker, ſince he is not ſtated to have been ſummoned till after the evidence had been given; and admitting it might have been on the ſame day, yet it could hardly have been at the ſame time. It is alſo ſtated, that he heard it *read*; which, had it been *given* in his preſence, would not have been neceſſary. But in this caſe of *R. v. Vipont* (which, as well as the former, is in the preſent tenſe) there is no intervening ſummons, but the defendants are immediately ſtated to have appeared; and as no adjournment of the proceedings is

* Vid. poſt, tit. Judgment.

ſtated,

ſtated, or any change in the dates appears, it ſeems as if all had paſſed on the ſame day; in which caſe, the Court have ſince held, the evidence may be preſumed to have been given in the defendant's preſence. They are alſo ſtated to have *heard* the charge (which charge being upon oath, ſeems to have been conſidered as evidence as well as information); and it may be that they heard it *given*, not that they merely heard it read or repeated without an oath. In point of fact (ſo far as that conſideration can have weight, it ſeems not wholly improbable that a manufacturer and his journeymen ſhould go together to the juſtices to ſettle a diſpute reſpecting their wages (under an expreſs clauſe in the act), and that he ſhould then make his charge againſt them. Upon the whole, it ſhould ſeem, either that the *firſt* ground of the determination in *R. v. Vipont* was not fully conſidered, or the authority of the caſe in Strange is greatly ſhaken by it.

The next caſe on this ſubject is *R. v. Aikin*[f]; but there the conviction is not ſtated, nor any abſtract of it given. It is only ſaid, that the defendant had been convicted on the Hawkers and Pedlars Act. The ſecond objection

[f] 3 Burr. 1786.

jection is ſtated to be, that the witneſs was not examined in the preſence of the defendant; and therefore he did not hear the evidence, as far as appears upon this conviction. To this the Court only ſay, "It may be pre-"ſumed that the witneſs was examined in his "preſence."

All we can conclude from this laſt caſe, as ſtated, is, that the general doctrine, admitted both in the caſes of *R. v. Baker* and *R. v. Vipont* (though they differed in the application), namely, "that the Court will preſume the "witneſs to have been examined in the de-"fendant's preſence unleſs the contrary ap-"pears," is recognized and confirmed.

The next caſe in the books is *R. v. Kempſon*[z], where, in a conviction upon the game laws, the appearance of the defendant and the evidence were ſet forth as follows:—"After-"wards upon the day and in the year afore-"ſaid, he the ſaid Samuel Kempſon, having "been duly ſummoned, appeareth, and is there "*preſent* before me, in order *to make his de-*"*fence* againſt the ſaid charge and informa-"tion; and having heard the ſame, is aſked "by me the ſaid juſtice if he can ſay "any

[z] Hil. 15. G. III. Cowp. 241.

" any thing for himſelf why, &c. who " pleadeth that he is not guilty of the ſaid " offence. Nevertheleſs, *on the ſaid 14th day* " *of September*, one credible witneſs, Richard " Cratorn, now cometh before me the ſaid " juſtice, &c. and upon his oath depoſeth and " ſaith, that on Wedneſday, the 14th day of " this inſtant September, he ſaw Samuel " Kempſon, &c. and thereupon the ſaid Sa- " muel Kempſon, before me the ſaid juſtice, " by the oath of one credible witneſs afore- " ſaid, according to the form of the ſtatute " aforeſaid in ſuch caſe made and provided, is " convicted of the ſaid offence, &c."

Mr. Chambre objected, that it did not appear upon the face of this conviction that the evidence was given in the preſence of the defendant; which it ought to be, that the party accuſed may have an opportunity of croſs examination.

Aſton Juſtice. " Enough appears upon " this conviction to ſhew that the witneſs was " examined in the preſence of the defendant. " It muſt be ſuppoſed that all that paſſed was " at one and the ſame time." *Per Cur.* Let the conviction be affirmed.

The

[h] Hil. 26 G. III. 1 Term. Rep. 125.

The next caſe was *R. v. Crowther* [h]: It was a conviction on 5 An. c. 14. for uſing a gun. After ſtating the information, which negatived every one of the qualifications in the 22 & 23 Car. c. 25. it ſtated, that "on "the ſame day of at, &c. "in, &c. one credible witneſs, to wit, E. T. "came before me, &c. and by his depoſition "taken in writing before me, &c. upon his "oath on the holy goſpel, &c. ſwore, and "upon his oath aforeſaid affirmed, that the "aforeſaid T. S. C. on the day of "aforeſaid, in, &c. did keep and "uſe a gun, and certain dogs called ſetting "dogs or pointers, to kill and deſtroy the "game, and hunted them over certain "grounds, part of Farm in the "pariſh aforeſaid, &c. and did then and there "(ſtating the fact of ſhooting a partridge), "contrary, &c. And afterwards, that is to "ſay, on the day of in the "year aforeſaid, he the ſaid T. S. C. having "been duly ſummoned, appeareth before, &c. "in order to make his defence; and having "heard the ſame, and the aforeſaid depoſition "of the ſaid E. T. having been read over "again unto the ſaid E. T. in the preſence "and hearing of the ſaid T. S. C. *and the ſaid* "*E. T.*

" *E. T. having again affirmed his ſaid depoſition*
" *to be true, in the preſence and hearing of the*
" *ſaid T. S. C.* he the ſaid T. S. C. is aſked
" by me if he can ſay, &c. why, &c. Where-
" upon (plea of not guilty) but he doth not
" produce to me any evidence that he is in
" any manner qualified, &c. to have, uſe, or
" keep, &c. any gun, &c. to kill or deſtroy
" the game of this kingdom. Whereupon,
" &c. (it appearing to the juſtice that he is
" guilty, he convicts of ſaid offence, and ad-
" judges him to have forfeited 5 l. &c.)"

1ſt Objection, The evidence was not given in the preſence of the defendant. The witneſs only *affirmed* his depoſition to be true. *Per Curiam*, " The firſt objection is good. " The witneſs ought to have been reſworn in " the defendant's preſence."

The laſt caſe on this point is *R. v. Thompſon*[1]. This was a conviction on 5 An. c. 14. ſtating (according to the precedent in 2 Burn, 308.) the information againſt the defendant, 2d December, 1786, the appearance of the defendant on the 9th, after being ſummoned, and the plea of not guilty; and then proceeding as follows: " Nevertheleſs, on the ſaid

[1] Trin. 27 G. III. 2 Term. Rep. 18.

"9th day of December, in the year aforeſaid, "at, &c. one credible witneſs, to wit, R. T. "of, &c. cometh before me the ſaid juſtice, "and before me the ſame juſtice, upon his "oath on the holy goſpel, to him then and "there by me the aforeſaid juſtice admini-"ſtered, depoſeth, and upon his oath afore-"ſaid affirmeth and ſaith, that (the defend-"ant, on the 7th day of December aforeſaid, "in the year aforeſaid, at, &c. (negativing "the qualifications in 22 & 23 Car. cap. "25.) did keep and uſe a gun to kill and "deſtroy the game. And thereupon the "ſaid (defendant), the ſaid 9th day of De-"cember, in the year aforeſaid, at, &c. be-"fore me the ſame juſtice, by the oath of one "credible witneſs aforeſaid, according to the "form of the ſtatute aforeſaid, is convicted, "and for his offence aforeſaid hath forfeited "the ſum of five pounds, to be diſtributed "as the ſtatute aforeſaid doth direct, &c."

After the caſe had been argued and decided on two other points (one that applied to the manner of ſtating the offence [k], and the other to the judgment [l]), the Court entertaining ſome doubt whether it ſufficiently appeared that the evidence was given in the defendant's preſence,

[k] Vid. poſt.
[l] Poſt.

preſence, deſired the matter might ſtand over. On the next day Aſhurſt, Juſtice, ſaid: "On looking into the caſes we find that this "objection has before been made; and the "Court have held, that in caſes circumſtanced like the preſent, they will intend, that "as the whole proceedings are ſtated to have "paſſed on the ſame day, the evidence was "given in the preſence of the defendant."

Buller Juſtice. "It has been decided in "ſeveral caſes, that there is no foundation "for this objection. The firſt of them was "*R. v. Aikin*[m]; where the conviction, as far "as the evidence went, was preciſely ſimilar "to the preſent. The Court ſaid, it may be "*preſumed* that the witneſs was examined in "the defendant's preſence. The next caſe was "that of *R. v. Kempſon*. There the ſame objection was made; but the whole tranſaction "appearing to have paſſed before the magiſtrate on the ſame day, Aſton J. ſaid: 'Enough appears upon this conviction to ſhew "that the witneſs was examined in the preſence "of the defendant. It muſt be ſuppoſed that "all that paſſed was at one and the ſame time. "Beſides, that the precedent in Burn is in the "ſame form." The conviction was affirmed.

[m] Burr. 1785.

It has been already obſerved *, that, even if it ſhall appear on the conviction that the evidence was not given in the defendant's preſence, yet if he confeſs the charge, that irregularity is cured [n].

[n] *R. v. Hall.* 1 Term. Rep. 320.

A third rule with regard to the evidence is, that *it muſt be of a fact prior to or exiſting at the time of the information*, and not of a fact ſubſequent to it. On this point turned the caſe of *R. v. Faller* [o]. J. S. came before the juſtices of peace, viz. two, according to the method directed by 12 Car. II. c. 23. ſ. 31. and gave them information that the defendant kept two concealed waſhbacks, contrary to 8 & 9 W. III. c. 19. This information was given the 30th of March, 1699. Upon which the two juſtices iſſued their ſummons to ſummon the defendant to appear before them the 3d of April following; at which day, upon his appearance, and oath being made by a credible witneſs, that the defendant *modo habet et cuſtodit eadem duo privata ſeu concelata vaſa, Anglice* waſhbacks, they adjudged that he ſhould forfeit 20 l. for each waſhback. It was moved to quaſh it, becauſe the informa-

[o] Ld. Raym. 509.

* Vid. tit. Confeſſion.

tion

tion was given the 30th of March, and the oath of the witneſs upon the 3d of April, upon which the conviction is grounded, is, *quod modo habet*, &c. which muſt be underſtood of the time of the conviction, which is a different offence from that of which the information was given to the juſtices; becauſe, though he had concealed veſſels the 3d of April, it may be that he had not any the 30th of March, when the information was given; and therefore the evidence on which the conviction was made not being conformable to the information, there is here a conviction without an information.——Serjeant Levinz. "1. The words of the oath are, "'quod modo habet *eadem* duo,' &c. which "proves that he had them at the time of the "information. 2. The juſtices may proceed "without complaint or information. 3. If "complaint be requiſite, they may proceed "upon it *inſtanter*."

Holt Chief Juſtice. "1. The evidence "is of a fact ſubſequent to the information; "and though the *eadem* may be evidence that "he had them at the time of the information, "yet convictions ought to be certain, and "not taken upon collection. 2. There ought

" to be information or complaint. 3. Though " a conviction made upon an information *in-* " *ſtanter* may be good, yet it ought then to " be declared to be made ſo, and not be " grounded, as here, upon an information " which is not proved, the evidence being of " a fact ſubſequent to it; but if it had been " of a precedent fact, it had been good."

A fourth rule in ſetting out the evidence is, that *the fact muſt be proved to have been committed in the place where it was laid*, or at leaſt in ſome place within the juriſdiction of the magiſtrate convicting. This is proved by *R. v. Jeffries* [p], which was a conviction on the Lottery Act [q], before two juſtices for the county of Middleſex. The information charged, " that on the 10th of " March, 1786, Thomas Jeffries, of Great " Queen-Street, &c. did, in Great Queen- " Street aforeſaid, in the pariſh of St. Giles's " in the Fields, take and receive from one " Thomas Jackſon, the ſum of 2s. and 9d. of " lawful money, &c. And in conſideration " thereof the ſaid Thomas Jeffries did pro- " miſe and agree to pay to the ſaid Thomas " Jackſon the ſum of one pound and one " ſhilling if a certain ticket, No. 18,433, in " the

[p] E. 26 G. III. 1 Term. Rep. 241.
[q] 22 G. III. c. 47.

" the lottery authorized and eſtabliſhed, &c.
" ſhould be drawn, fortunate or unfortunate,
" on the 30th day of drawing the ſaid lot-
" tery, contrary to the form of the ſtatute in
" ſuch caſe made and provided. By reaſon
" whereof, &c."

The evidence was as follows:—" Thomas
" Jackſon depoſeth and ſaith, that on the
" 10th of March laſt he inſured perſonally
" with the ſaid Thomas Jeffries No. 18,433,
" and paid two ſhillings and ninepence to
" receive one guinea, if drawn blank or prize
" the 30th day of drawing, and received the
" ticket now here produced; which ticket is
" in the words and figures following;" (de-
ſcribing it).

Erſkine objected, that the evidence did not prove the offence to be committed in the place laid in the information; which it ought to have been done: for wherever the juriſdiction of the magiſtrates who try the offence is local, the offence muſt be proved to have been committed within their juriſdiction.

Of this opinion was the Court; therefore the conviction was quaſhed.

The fifth and laſt rule reſpecting the evidence is, that *it ſhall be ſet out at large, and* (as a neceſſary conſequence) *contain a full and accurate ſtatement of the facts that conſtitute the offence.*

The above rule branches out into ſeveral points:

Firſt, It is perfectly ſettled, notwithſtanding the caſe of the *Queen v. Pullen* and others[r], that it is not ſufficient merely to ſtate that the witneſs ſwore *de veritate præmiſſorum*, referring to the information. This a variety of caſes have determined, viz. the *Queen v. Green*[s], where the oath was *de veritate præmiſſorum*. The *King v. Baker*[t], where the evidence was, that the defendant is *guilty of the premiſes*, which was taking upon him to ſwear the law. The *King v. Theed*[u], where it was only alledged that the offence was fully and duly proved. The *King v. Lloyd*[x], where the Ch. Juſtice ſays, "It is fully ſettled that "in convictions the evidence muſt be ſet out; "and if this was to be conſidered as a con- "viction, it would therefore be bad*."

[r] Salk. 369.

[s] 10 Mod. 213.

[t] Stra. 316.

[u] 2 Stra. 919.

[x] 2 Stra. 999.

* It was an order of the quarter ſeſſions againſt a clerk of the peace.

The

The above caſes were fully confirmed in the *King v. Killett*, clerk [y], which was a conviction of a clergyman before a juſtice of the peace, upon 19 G. II. c. 21. ſ. 13. for neglecting to read the act to prevent profane curſing and ſwearing; and it was quaſhed, becauſe the evidence was not ſtated and ſet out ſo as that the Court could judge of its ſufficiency.

[y] 4 Burr. 2062.

It ſet forth, that on ſuch day, and at ſuch a place, R. E. one of the churchwardens of B. came before him, and gave information, &c. The information fully charged the offence, ſpecifying that the defendant was parſon of the pariſh, and that he officiated as ſuch on one of the days mentioned in the act of parliament, and omitted and neglected to read, &c. and that the defendant was duly ſummoned, but neglected to appear or make any defence; whereupon the juſtice proceeded to examine into the truth of the ſaid charge; and *the ſame as ſet forth being duly proved* before him, as well by the oath of the ſaid R. E. as by the oath of G. C. of B. aforeſaid, farmer, a credible witneſs, he adjudged the defendant guilty, and convicted him in 5l.

The

The Court ſaid, that the evidence ought to be ſet out. They ſaid, this was clearly ſo ſettled in the *King v. Biſſex*[a] in this Court. Whereas here it is only ſaid, "the ſame as "ſet forth being duly proved." They refer alſo to the above caſe of the *Queen v. Green*, to the *King v. Vipont*[b], and to the above caſe of the *King v. Lloyd*, which was cited and relied on by Mr. J. Denniſon in delivering the reſolution of the Court in the caſe of the *King v. Biſſex*, where he declared, that the caſe of the *King and Queen v. Pullen* and others (of oath made de veritate præmiſſorum generally, without ſetting it forth eſpecially, being ſufficient in convictions) is not law now; it having been ſince that caſe quite ſettled, "that upon a conviction it is neceſ-"ſary that the evidence ſhould be ſet out, "that the Court may judge whether the juſ-"tices have done right;" but upon an order it is not neceſſary, becauſe the Court will preſume they have done right. The conviction was quaſhed. This alſo was confirmed by the Court in the *King v. Read*[b].

[a] Trin. 1756. 29th & 30th G. II.

[b] 3 Burr. 1163. ante, 71, &c.

[b] Dougl. 469.

It being therefore clear that general words of reference are not ſufficient, it may be laid down,

down, ſecondly, that the evidence muſt, in *moſt* caſes, be at leaſt as full as the information.

Thus in ſuch caſes as that of the *Queen v. Burnaby*[c], where the offence was in the nature of a *treſpaſs de bonis aſportatis*, it muſt, from the reaſon of the thing, be as neceſſary (if not more ſo) in the evidence, as in the information, to ſtate the number and nature of the things taken and deſtroyed; and the ſame obſervation ſeems to hold as to caſes ſimilar to the *King v. Catherall*[d], which was a conviction and commitment for not accounting for money received as collector under a turnpike act.

[c] Lord Raym. 900. ante, 33.

[d] Stra. 900. ante, 34.

But thirdly, *in ſome caſes, and in ſome particular expreſſions*, the evidence is not required to be as full as the information, nor, perhaps, to tally preciſely with it.

Thus, if a ſtatute varies the puniſhment of an offence, according to the rank, age, or other circumſtances of the offender, and the information ſtates his rank, age, or the other circumſtances pointed out, the evidence, provided it refers to the perſon mentioned in the information,

information, need not ſhew his rank, age, &c.

[e] Lord Raym. 1386.

This was the caſe of the *King v. Tucke* [e], which was a conviction upon ſtat. of 6 & 7 W. III. c. 11. (before a ſummary conviction had been eſtabliſhed by 19 G. II. c. 21.) for profane curſing and ſwearing. The information deſcribed the defendant to be a gentleman, and above the age of ſixteen; and, though the witneſs did not ſwear to *that deſcription*, yet ſince he ſwore that *prædictus* J. T. did ſwear, &c. the Court held that was ſufficient.

Under ſome ſtatutes alſo it ſeems that a particular act or conduct ſworn to by the witneſs, if it amount to the offence deſcribed in the *ſtatute*, though it be not exactly a ſimilar deſcription of the offence to that in the *information*, may be ſufficient, and ſupport an adjudication in terms ſimilar to the information.

[f] 3 Burr. 1475.

The *King v. Smith* [f], was a conviction of the defendant on the ſtatute of 9 & 10 W. III. c. 27. ſect. 8. for trading as a hawker, pedlar, or petty chapman without having a licence *.

* The act of 29 G. III. cap. 26. has now given a ſummary form.

It

It was objected on behalf of the defendant, that the *evidence* which the juſtice had ſtated was not ſufficient to ſupport his *adjudication*, "That the defendant had no licence." The charge was, that the man had traded as a hawker, pedlar, or petty chapman, in ſelling, &c. without having a licence. The evidence ſtated is only, that the man *refuſed to produce* any licence: whereas the trading without having any licence, and the refuſing to produce his licence (if he has one) are quite diſtinct offences, &c. And the man's having confeſſed that he *traded* as a hawker, &c. is no ground for convicting him for trading as ſuch without a licence, notwithſtanding his refuſal to produce it. And though the 8th ſection of the act gives the ſame forfeiture for not producing as for not having one; yet that cannot alter the nature of the offence. But Lord Mansfield ſaid, he could ſee no doubt of the conviction's being a good one upon the 8th clauſe. The conviction was affirmed *.

Under

* The reporter obſerves (juſtly as it ſhould ſeem) that the 8th ſect. of the act ſeems to conſider not producing to be the ſame offence, and the ſame thing, as not having.

A con-

Under this head of caſes where the evidence need not be ſo *full* as the information, may be claſſed the doctrine that now ſeems to be admitted by the Court of K. B. that, in a conviction under the Game Act of 5 An. c. 14. though the *information* muſt negative all the qualifications of the ſtat. of Car. II. they need not be particularly ſet out in the *evidence**.

The ſecond objection to the conviction in *R. v. Crowther*[§] was, that the qualifications required by the ſtat. 22 Car. c. 25. were not negatived by the evidence; and in ſupport of it the words of Mr. Juſtice Denniſon in *R. v. Jarvis*† were cited, and alſo the words of Mr. Juſtice Aſhurſt in *R. v. Wheatman*‡, who ſaid

§ 1 Term. Rep. 125.

A conviction for this offence would now be under ſect. 11. of 29 G. III. c. 26. and a juſtice would, it ſhould ſeem, be warranted under that clauſe, either to convict for trading without a licence on the evidence of the party's refuſing to produce one, or (if the demand of the licence ſhall have been made by a perſon authorized by the commiſſioners for hawkers) to conſider the refuſal as a ſubſtantive offence; but by the form there given, it appears, that the evidence need not be ſet out though the information ſtill muſt.

* Vid. obſervations on the caſe of *R. v. Jarvis*, ante, 43.
† Vid. ante, 41. ‡ Ante, 46.

in

in that caſe, that "the evidence muſt prove, "but cannot ſupply, any defects in the infor- "mation." The Court quaſhed the conviction on the firſt objection *. "As to the other "point" (they ſaid) "there is no caſe in "which it has been directly decided that the "evidence ſhould negative every particular "qualification. It cannot be ſo from the "nature of the caſe."

A fourth obſervation is, that *in ſetting forth the act or acts of the defendant that conſtitute the offence, the evidence ſhould,* IN GENERAL, *be more particular than the information.*

Reaſon ſeems to require this, where the caſe will admit of it. In ſome inſtances the offence can only be deſcribed generally in the information, and yet conſiſts, either of a number of diſtinct acts, which, in the aggregate, conſtitute the offence, and muſt therefore be ſet forth in the evidence, or of ſome act that from its nature muſt have been, in point of fact, particularly ſet forth by the witneſs, and therefore ought to be ſo by the juſtice.

Of the firſt ſort ſeems to be the caſe of

* Vid. ante, 81.

King

King v. Little *, where it was held, that a ſingle act of trading was not ſufficient to prove a man to be ſuch a hawker, pedlar, and petty chapman, as ought to take out a licence.

Of the latter kind ſeem to be thoſe caſes where the deſcription of the offence given by the ſtatute is ſo general as to admit of, and indeed require, a more circumſtantial detail of the fact when it is to be proved in evidence.

We muſt, however, except from this doctrine the convictions under 5th Anne, c. 14. for the preſervation of the game; for as to them it has been determined (in two caſes) to be ſufficient if the evidence is ſtated in the ſame general terms as the information.

[b] East. 22 G. III. Cald. Rep. p. 175.

The firſt of theſe was the *King v. Hartley* [b]. This was a conviction under 5 An. c. 14. for keeping and uſing a greyhound to kill and deſtroy the game. The information ſtated, that "T. H. of the pariſh of T. in the weſt "riding of the county of York, did, at the "pariſh of T. aforeſaid, in the weſt riding

* Vid. ante, title Confeſſion, p. 66.

"aforeſaid,

" aforeſaid, within three months now laſt
" paſt, viz. &c. keep and uſe * *a certain dog*
" *called a greyhound*, to kill and deſtroy the
" game, &c. And the conviction further
" ſtated, that on the 24th day, &c. at &c.
" one credible witneſs, to wit, J. F. of the
" pariſh of Carleton, in the Weſt Riding
" aforeſaid, yeoman, cometh before, &c. and
" being then and there ſworn, &c. depoſeth,
" &c. in the preſence of the ſaid T. H. that
" within three months next before the infor-
" mation was made before me the ſaid juſtice
" by the ſaid T. B. (the informer) as aforeſaid,
" to wit, on the day of aforeſaid, in
" the 21ſt year aforeſaid, the ſaid T. H. at
" the pariſh of T. aforeſaid, in the Weſt Riding
" aforeſaid, being a perſon not then having
" lands, &c. &c. did keep and uſe a certain
" dog, called a greyhound, to kill and deſtroy
" the game. Whereupon all and ſingular the
" matters, things, and evidences abovemen-
" tioned, being fully heard and underſtood by
" the ſaid T. H. and for as much as the ſaid
" T. H. doth not offer, alledge, or ſay any
" thing, or produce or offer any evidence in

* An objection was made to this deſcription of a greyhound; but the Court held, it was a ſufficient averment of his being a greyhound.

"answer to the said information, evidence "matters, things, and premises, or any of "them charged on him as aforesaid, it mani- "festly appears to me, the said justice, that "the said T. H. is guilty of the premises in "manner and form aforesaid, above laid to "his charge. Wherefore I the said justice, "upon the oath, &c. do adjudge, that the said "T. H. on the day of aforesaid, at, "&c. in, &c. did keep and use a certain dog, "called a greyhound, to kill and destroy the "game, and that the said T. H. had not any "lands, &c.; and thereupon, I the said jus- "tice, &c. do convict, &c."

The first and chief objection taken to this conviction was, that it was not fully and sufficiently stated that there had been a using of the greyhound, *i. e.* how, and in what manner, and for what purpose. The answer was (in substance) that the bare keeping of a greyhound is an offence within the statute; and the cases of *R. v. Filer* and *R. v. Gardner* were stated as to the distinction between keeping of a dog (of the kinds enumerated) and a gun, which may be kept for the protection of a man's house.

Lord

Lord Mansfield.—" Convictions muſt cer-
" tainly be preciſe, that the Court may ſee
" whether the offence committed falls within
" the juriſdiction of the magiſtrate; and, what-
" ever the conſequences are, they muſt be
" quaſhed, if not ſo. In this act there are two
" offences deſcribed, a keeping and a uſing;
" and the legiſlature mean that there may be
" a keeping to deſtroy, which is not of neceſſity
" to be proved by a uſing for that purpoſe. If
" it were ſo, it would be tautologous; for ſuch
" evidence would be a proving of the other of-
" fence. The keeping therefore of a thing pro-
" hibited being an offence under the act, it is
" neceſſarily prima facie evidence of a keeping
" for the purpoſe prohibited; and it is incum-
" bent on the defendant to ſhew that it is kept
" for another purpoſe; as, in the preſent caſe,
" that it is a houſe dog, a favourite dog, or a par-
" ticular ſpecies of greyhound. The deſcrip-
" tion cannot be more preciſe, unleſs ſome par-
" ticular inſtance of uſing is ſhewn; which, if
" keeping of itſelf conſtitutes an offence, can-
" not be neceſſary."

Willes, J.—" The caſe of the *King v. Gardner*
" is in point, and muſt govern this. There is

"hardly another uſe to which this ſpecies of "dog can be applied." The conviction was affirmed.

On the above report (which I find confirmed by the manuſcript note of a gentleman of acknowledged accuracy *) it is obvious to remark, that the Court ſeem carefully to diſtinguiſh between a conviction for a *greyhound*, and a conviction for a *gun* (as laid down in *R. v. Filer* and the other caſes) and to have gone entirely upon that diſtinction, laying that part of the evidence that mentions the *uſing* out of the queſtion, and going upon the keeping alone, as a diſtinct and ſubſtantive offence. General evidence of *keeping* may be ſufficient where *keeping* is *in itſelf* an offence;

* In that note Ld. M.'s words are ſtated as follows:— "Convictions muſt be preciſe, and whatever the conſe- "quences are, they muſt be quaſhed if not preciſe. But "here are *two* offences. *If keeping were neceſſary to prove* "*uſing, or uſing to prove keeping, it would be tautologous.* "Keeping is an offence; but the defendant may ſhew that "he kept it for another purpoſe. The deſcription can- "not be more preciſe, unleſs a particular inſtance of de- "ſtruction were ſhewn, which is not neceſſary, as keeping "is an offence. A dog called a greyhound can mean "nothing but a greyhound."

I have ſeen another MS. note of the caſe to the ſame effect.

and

and yet it may not follow, that, in a caſe which requires the proof of *uſing* likewiſe (the nature of which admits of and appears to call for the proof of particular acts) ſuch a general ſtatement of evidence muſt neceſſarily be held good.

However, in the *King v. Thompſon*[k], the ſame point came in queſtion as to a conviction for a *gun*, and the Court held the above caſe of *R. v. Hartley* to be an expreſs authority in ſupport of the conviction.

[k] 2 Term. Rep. 18.

In that caſe * the evidence only was, that the defendant, on ſuch a day, &c. *did keep and uſe a gun to kill and deſtroy the game.*

On the firſt argument, which turned on another point †, the Court themſelves ſuggeſted this queſtion, "Whether the evidence "was ſufficiently ſet forth, ſo that they could "ſee by what act the defendant had incurred "the penalty;" for they obſerved, that the act of keeping a *gun* was in itſelf ambiguous, and that it muſt be ſhewn to be kept for the purpoſe of killing game, in order to bring the

* See it ſtated at large, ante.

† Vid. poſt, title Judgment.

party keeping within the act of parliament. It was not like keeping a *greyhound*, or a *ſnare*, which could not be kept for any other purpoſe, and which was expreſsly prohibited by the act. On a ſubſequent day (after it had been argued by Mr. Wood againſt the conviction, and Mr. Chambre in ſupport of it*) Mr. Juſtice Aſhurſt ſaid:—"If this "were a new caſe, I ſhould moſt undoubtedly "be of opinion, that this conviction could not "be ſupported; becauſe I think that the evi-

* Mr. Chambre is ſaid to have relied a good deal on the circumſtance of the precedent in Burn's Juſtice being in this form. To ſhew that this had weight, he cited Jones v. Smart (1 Term. Rep. 44.) where the majority of the Court (who held that eſquires and perſons of higher degree were not to be conſidered as qualified under the game laws, unleſs they had the qualification of property) relied on the precedents being conſtantly in that form (viz. inſerting the word "of" before the words "other "perſons of higher degree" in negativing the qualifications) from whence he inferred, that in the preſent caſe the precedent in Burn ought to have weight. But query whether, as to this point (of ſtating the evidence of uſing generally only) the precedents have uniformly followed that in Burn? In ſome of the caſes ſtated in the preceding part of this book it ſeems to have been otherwiſe; (vid. R. v. Kempſon, ante, 79. R. v. Crowther, ante, 80.; vid. alſo a precedent on the ſame ſubject, in the precedents, title Game, ſettled by Mr. Dunning.

"dence

" dence ſhould be ſet forth particularly, that " we may judge whether the juſtice has con- " victed upon proper evidence. The fact of " keeping or uſing the gun for the purpoſe of " deſtroying game ſhould appear; but it is " only ſtated here that the defendant kept " and uſed, &c. which is the *reſult* of his evi- " dence. Then, whether he kept it for the " purpoſe of killing game, is likewiſe a queſ- " tion of law; for an ignorant witneſs in the " country might fancy that a woodcock or a " rabbit was game. So that it ſeems to me, " that permitting this general evidence to be " ſtated, is allowing the witneſs to give his " opinion on the law, as well as the facts. " But at the ſame time, as precedents are " uſually in this form, and as the conviction " in *R. v. Hartley* was ſimilar to the preſent " it is better to ſupport this conviction, than " by quaſhing it to overturn all former pre- " cedents."

Buller, J.—" If this precedent had never " been adopted, I ſhould have been of opi- " nion that the evidence ſhould have been " fully ſet forth; but after ſo many convic- " tions have been made in the ſame form, " it would be dangerous to quaſh the pre-

" ſent. The diſtinction taken in the *King v.* " *Filer* is good law. It is not an offence to " keep or uſe a gun, unleſs it be kept or " uſed for the purpoſe of killing game. " But here it is ſtated by the evidence, that " the defendant did keep and uſe a gun to " kill and deſtroy the game.—As to the " other queſtion reſpecting game, I can- " not agree that the witneſs, in ſwearing that " the defendant uſed a gun to deſtroy game, " would be ſwearing to a queſtion of law; " becauſe it is ſettled by act of parliament, " and every man is bound to know what is " game. If he ſwears that to be game which " is not ſo in law, he would be guilty of " perjury. Game muſt be underſtood in its " legal ſenſe."

Groſe, J.—" I cannot give my conſent " to ſupport this conviction. The juſtice " ſhould return particularly all the facts and " the concluſion in the conviction: firſt the " information, the ſummons, the appearance, " or defendant's default in not appearing, " that the information was read to the de- " fendant, that he was aſked what he had to " plead, the whole of the evidence particu- " larly, and the adjudication. The witneſs

" ſhould

" ſhould ſwear to the facts, and not to the
" law; and in this caſe it is almoſt incredible
" that the witneſs ſhould have ſworn in the
" manner in which this evidence is ſet out.
" The juſtice ſhould not have received it if
" it were offered in this general way; but
" ſhould have queſtioned the witneſs as to
" the manner in which this gun was kept,
" for what purpoſe it was uſed, and what
" particular kind of game he killed or at-
" tempted to kill. All theſe particulars
" ſhould have been ſet forth, in order that
" we might judge whether they conſtituted
" an offence within the act of parliament.
" Here the witneſs ſwore to the law; namely,
" 'that the defendant kept and uſed a gun to
" kill and deſtroy the game.' And in *R. v.*
" *Baker* [1], a conviction for taking pilchards [1] Stra. 316. ante.
" was quaſhed, becauſe the witneſs ſwore
" generally that the defendant was *guilty of*
" *the premiſes*; which was taking upon him-
" ſelf to ſwear to the law. Now the reaſon-
" ing in that caſe applies ſtrongly to the pre-
" ſent; for the evidence here ſtated only
" amounts to that, 'that the defendant is
" guilty of the premiſes.' I confeſs that *R.*
" *v. Hartley* is a conſiderable authority the
" other way. But I would rather chooſe to
" decide

" decide this caſe according to that of *R. v.* " *Baker*; becauſe, I think, nothing can be " more miſchievous to the country than ſuf- " fering a juſtice of the peace to ſtate a con- " viction generally; and there can be no in- " convenience in ſtating the whole matter " particularly for the opinion of this Court, " if the juſtice does not exceed his authority. " Although the preſent conviction cannot be " quaſhed, becauſe my brothers have given " their opinions in ſupport of it, yet I did " not chooſe the queſtion ſhould paſs *ſub* " *ſilentio*; eſpecially as this declaration of my " opinion may have the effect of inducing " juſtices of the peace in future to ſtate the " whole matter upon the record."

The next day (the matter having ſtood over on another point) Mr. J. Aſhurſt declared himſelf of the ſame opinion that he had given the day before. Mr. J. Buller ſaid, " With reſpect to the other queſtion " (viz. the preſent), that alſo has been de- " cided by the caſe of the *King v. Hart-* " *ley*. There the firſt objection was, that " the witneſs had ſworn to the law; for that " what was game was a queſtion of law; " but that objection did not prevail. The

" ſecond

" ſecond objection was, that the evidence " was not ſufficiently ſet forth, becauſe the " manner of keeping or uſing the greyhound " did not appear, and the conviction only " purſued the language of the act of parlia- " ment. Upon that occaſion Lord Mansfield " ſaid, convictions muſt be preciſe, that the " Court may ſee that they fall within the ju- " riſdiction of the juſtices. There are two " offences deſcribed by the act of parliament, " *keeping* or *uſing* for the purpoſe of deſtroy- " ing game. *There may be a keeping without* " *its being for the purpoſe of deſtroying game*; " therefore there ſhould be evidence of the " purpoſe for which it is kept. But the " evidence ſtates, that defendant *uſed* as well " as kept the greyhounds for the deſtruction " of game." So that this caſe goes the whole length of deciding the other objection which was made yeſterday.

Groſe Juſtice. " As the precedent in " Burn (though it ſeems to me a faulty one) " has been recognized by this Court in *R. v.* " *Hartley*, of which I was not aware be- " fore yeſterday, I think it muſt be ſupport- " ed. It might be highly inconvenient to " overturn it; and I ſhould be ſorry that any

" opinion of mine ſhould ſhake the authority " of an eſtabliſhed precedent; ſince it is " better for the ſubject, that even faulty pre- " cedents ſhould not be ſhaken, than that the " law ſhould be uncertain." The conviction was therefore affirmed.

After the above determination, it would be preſumptuous to argue further upon this particular caſe. But it may be proper to caution juſtices of the peace againſt relying on this caſe in framing any other conviction than thoſe *under the ſame act of parliament*; for the Court will hardly extend the authority of a caſe determined upon precedent alone, and contrary to the general principles ſo clearly laid down by them, to any caſe that does not fall exactly within the letter of it.

OF THE

Judgment or Adjudication.

THE JUDGMENT is a neceſſary part of every conviction; and ſhould contain, 1ſt, *An adjudication that the defendant is convicted*; and, 2dly, *An adjudication of the forfeiture or penalty.*

As to the firſt, the general way of expreſſing it is to ſay, "*that the defendant is* "*convicted of the ſaid offence againſt the form of* "*the ſtatute.*" This mode of expreſſion ſeems to have been conſidered as ſo efficacious, that in *R. v. Lammas*[a], on a conviction upon the ſtatute of W. & M. for keeping a warehouſe for low wines, &c. without giving notice to the next officer of exciſe, this form of adjudication was deemed competent to cure a defect in ſtating the evidence, viz. the

[a] Skin. 562.

the not having ſhown that the defendant was proved to be a common diſtiller *.

However, though this ſeems to be, in general, the beſt mode of adjudication, the juſtice is not tied exactly to thoſe words; for in *R. v. Thompſon* [b], where the conviction (after ſtating the evidence) concluded thus: "And "thereupon the ſaid defendant, the ſaid "day of at, &c. before me the "ſame juſtice, by the oath of one credible "witneſs aforeſaid, according to the form of "the ſtatute aforeſaid, *is convicted, and for "his offence aforeſaid hath forfeited*, &c." Though it was objected that it did not appear *of what* the defendant had been convicted, yet the Court held it to be ſufficient.

[b] 2 Term. Rep. 28.

On the other hand, where more offences than one are charged in the information (as where a man was charged on one of the Lottery Acts with *dealing in ſhares of lottery tickets*, and alſo with *regiſtering tickets*, without a licence), it is not ſufficient to ſay he is "con-"victed of the ſaid offence;" but if (which the Court ſeemed to doubt) both offences might have been included in one conviction, he ſhould have been convicted of both [c].

[c] *R. v. Salomons.* E. 26 G III. 1 Term. Rep. 249.

* Sed Q. if that caſe be law?

What

What evidence will juſtify a conviction under any ſtatute muſt depend, in each particular caſe, upon a compariſon of the evidence with the information, and with the ſtatute on which the conviction is made. But it may not be uſeleſs to take notice here of two or three caſes of late years, in which ſome ſtatutes appear to have been greatly miſapprehended by juſtices of the peace, in order to prevent ſimilar miſtakes in future.

The firſt is *R. v. Clarke*[d], which was a conviction upon 33 H. VIII. c. 9. ſ. 16. in effect as follows:

[d] East. 14 G. III. Cowp. 35.

" Be it remembered, that on, &c. S. P. " and J. B. of, &c. came before me W. C. " one, &c. and gave me to underſtand and " be informed, that T. C. of, &c. labourer, " on the 16th of Auguſt, 1773, did uſe and " play at a certain unlawful game with bowls " and pins, called bowlruſhing, with divers " liege ſubjects of our ſaid lord the king, " and did then and there receive divers ſums " of money of the ſaid ſubjects, playing at " the ſaid game againſt the form, &c. and " againſt the peace, &c. and pray that the " ſaid

" ſaid T. C. may be convicted of the ſaid of-
" fence: Whereupon afterwards, on, &c.
" the ſaid T. C. being apprehended and
" brought before me, &c. to anſwer to the
" ſaid charge, &c. the ſaid T. C is aſked by
" me if he can ſay any thing for himſelf why
" he the ſaid T. C. ſhould not be convicted
" of the premiſes above charged upon him,
" &c. and thereupon the ſaid T. C. of his
" own accord fully acknowledges the pre-
" miſes, &c. to be true as charged, and does
" not ſhew to me any ſufficient cauſe why he
" ſhould not be convicted thereof. Where-
" upon all and ſingular the premiſes, &c.
" being conſidered, and due deliberation be-
" ing thereunto had, I do adjudge and de-
" termine that the ſaid T. C. is guilty of the
" premiſes, &c. and that the ſaid T. C. *is*
" *therefore an idle and diſorderly perſon*, and is
" alſo therefore *a rogue and vagabond* within
" the true intent and meaning of the ſtatutes
" in that caſe made and provided. And the
" ſaid T. C. is accordingly by me convicted
" of the offence charged upon him in and by
" the ſaid information, *and of being an idle*
" *and diſorderly perſon*, and *a rogue and vaga-*
" *bond*, in form aforeſaid: and I do hereby
" adjudge and order, that the ſaid T. C. be

" therefore

" therefore *committed to the houſe of correction*,
" there to remain for the ſpace of one month,
" being a leſs time than until the next general
" quarter-ſeſſions of the peace, or until the
" ſaid T. C. ſhall find ſufficient ſureties to be
" bound in recognizance to appear before the
" next quarter-ſeſſions, and for his good be-
" haviour in the mean time."

The Court at firſt quaſhed this conviction, on an objection, that it was not alledged in the information, that the playing at bowls was *out of the defendant's own orchard*, and it is only unlawful *ſub modo*. Afterwards, in the ſame term, Lord Mansfield ſaid, "A doubt had ariſen, " whether, as by another part of the 16th ſec-
" tion of 33 H. VIII. it is made unlawful for a
" *labourer* to play at any time out of Chriſtmas,
" the conviction was not good, as the defend-
" ant was ſtated to be a labourer, and the play-
" ing laid on the 16th of Auguſt. But," his Lordſhip obſerved, "the puniſhment appeared
" to be under the Vagrant Act, 17 G. II. c. 5.
" ſ. 2. therefore deſired it might be ſpoken to
" again upon this point, and alſo whether it
" was a good adjudication under this latter
" ſtatute."

Afterwards Mr. J. Aſton (Lord M. abſent) delivered the opinion of the Court.

"This conviction is a jumble and confuſion of charges and puniſhments. It is a "conviction for playing at bowls, and the "puniſhment inflicted is impriſonment as an "idle and diſorderly perſon. The ſtatute "33 H. VIII. c. 9. ſ. 16. lays a penalty of "20 s. on every labourer playing at bowls "out of Chriſtmas. The puniſhment is there-"fore clearly not under this ſtatute. The ſtatute "17 G. II. c. 5. ſ. 2. deſcribes four kinds "of idle and diſorderly perſons, and being "an explanatory act, we cannot go out of it. "Now *lowling* is not an offence within any "of theſe deſcriptions; conſequently the de-"fendant is not puniſhable as an idle and diſ-"orderly perſon. But the puniſhment is "under this latter ſtatute." Conviction quaſhed.

Another material point was alſo ſettled in the caſe of *Cripps v. Durden*[c], which was an action againſt a juſtice of peace for levying three more penalties, as for three more offences, on a baker for exerciſing his trade on a Sunday, contrary to 29 Car. c. 7. having already

[c] Trin. 17 G. III. Cowp. 640.

already convicted him in one penalty for a similar offence *on the ſame day*. The Court held that this offence could be committed but once in the ſame day. "For," ſaid Lord Mansfield, "on the conſtruction of the "act of parliament, the offence is, exerciſ-"ing his ordinary trade upon the Lord's "day; and *that* without any fraction of a day, "hours, or minutes. It is but one entire "offence, whether longer or ſhorter in point "of duration; ſo, whether it conſiſt of one "or a number of particular acts. The pe-"nalty incurred by this act is 5 s. There is "no idea conveyed by the act itſelf, that if "a tailor ſews on the Lord's day, every "ſtitch he takes is a ſeparate offence; or if "a ſhoemaker or carpenter work for differ-"ent cuſtomers at different times on the ſame "Sunday, that thoſe are ſo many ſeparate "and diſtinct offences. There can be but one "entire offence on one and the ſame day. And "this is a much ſtronger caſe than that which "has been alluded to of killing more hares than "one on the ſame day. Killing a ſingle hare "is an offence; but killing ten in the ſame day "more will not multiply the offence, or the "penalty impoſed by the ſtatute for killing

" one *. Here repeated offences are not the " object which the legiſlature had in view " in making the ſtatute, but ſingly to puniſh " a man for exerciſing his ordinary trade and " calling on a Sunday. Upon this conſtruc- " tion the juſtice had no juriſdiction with re- " ſpect to the three laſt convictions."

They alſo held, that in ſuch a caſe as this an action would lie againſt the juſtice, though the convictions had not been quaſhed, as he had no juriſdiction, after having convicted in one penalty. It may, however, be remarked, that the above determination cannot be meant to extend to *all* offences under penal ſtatutes; ſome of which (for inſtance the act againſt ſwearing) admit of ſeveral offences, and conſequently of ſeveral convictions, on the ſame day. But the nature of the act that conſtitutes the offence, as well as the in-

* This ſeems to be becauſe it is not the *killing of the hare* that conſtitutes the offence, but uſing the dog, gun, or engine with which the hare was killed. Sed Q. the point here laid down, and vid. *R. v. Gage*, ante, p. 63. where a conviction in four penalties, for killing four hares, was held good; though it is to be obſerved that *this* objection was not made in that caſe.

tent

tent and expreſſions of each ſtatute, properly attended to, will be a better guide than any general direction that could be given.

The ſecond and laſt branch of the judgment is, *a declaration of the forfeiture or penalty incurred*, and *a diſtribution of the ſum forfeited*, in caſe the ſtatute ſo directs.

This declaration is held to be a neceſſary part of every conviction. It is ſaid, indeed, in Chandler's caſe, as reported in Salk. 378. that *ideo conſideratum eſt*, without adding, *et quod forisfaciat*, was held ſufficient; for the judicial part ends at the conviction; the reſt is only conſequence and execution. But the other reports of that caſe differ in this particular. In Carthew 501, the objection is ſaid to have been, that there was no conditional judgment for ſetting the defendant in the pillory, *ſi*, &c. and Lord Raymond ſtates, that the third exception (the only one that bears upon this point) was, "that the judgment is only *quod* "*forisfaciat*, whereas it ought to be *ideo con-* "*ſideratum eſt*." At all events, the latter determinations have fully eſtabliſhed the neceſ-

ſity of ſetting forth the forfeiture; and it ſeems the ſame as to any other kind of puniſhment, at leaſt if any diſcretion is left to the magiſtrate as to its nature or degree.

[f] 8 Mod. 175. *R. v. Aſhton*[f]. This was a conviction on ſtat. 1 G. I. c. 48. for deſtroying fruit trees, the puniſhment for which offence is, to be ſent to the houſe of correction for three months, and to be publicly whipped once in every month during that time. And it was moved to quaſh this conviction, becauſe it did not ſpecify the puniſhment inflicted by that ſtatute; for that being a particular puniſhment, viz. to be ſent to the houſe of correction for three months, &c. ought to be ſet forth in the conviction, ſince this offence is to be heard and finally determined by the juſtices.

The report ſays, the *better opinion* was, that this being a ſpecial judgment of the two juſtices, they ſhould have ſpecified the puniſhment which the ſtatute inflicts upon the offender, becauſe it may be different from the puniſhment inflicted by them. However, there being no forfeiture for this offence, it was

was therefore held that *ideo conſideratum eſt quod convictus eſt* was ſufficient.

R. v. Sir E. Elwell and others. The defendants were convicted, upon view of three juſtices in Kent, of a forcible detainer, and were by them committed to Maidſtone gaol till they ſhould pay a fine to the king. Upon which they ſued out a certiorari to remove the conviction into the King's Bench, and a habeas corpus to bring up their bodies. The Court held, that this commitment, being that the defendant ſhould lie in priſon till they pay their fine, and no fine was ſet, the conviction was naught, and was quaſhed, and the defendants diſcharged, February 18, 1727.

R. v. Hawkes[g]. A conviction for killing deer was quaſhed, becauſe it was only *convictus eſt*, without any judgment *quod forisfaciat*.

[g] 2 Stra. 858.

In *R. v. Vipont et al.*[h] * the third objection to the conviction (which was on 12 G. I. c. 34. for preventing unlawful combinations of workmen employed in the woollen manufactures, &c.) was, that it is only ſaid, "they are *con-*

[h] 2 Burr. 1163.

* Quod vid, ante, tit. Confeſſion.

" *victed* for unlawfully entering into ſuch " combination." It ought to proceed, *quod forisfaciat*, and expreſsly adjudge the forfeiture. (The above caſe of *R. v. Hawkes* was cited and ſtated.) They ought to have awarded the particular puniſhment, as the act does not fix the duration of the puniſhment, but leaves the time of impriſonment quite diſcretionary, " for any time not ex- " ceeding three months." Therefore this caſe differs widely from caſes where the puniſhment is aſcertained, and neceſſarily flows from the conviction.

As to this objection, Lord Mansfield is ſtated to have ſaid: " Here the puniſhment " is diſcretionary as to the length of the time " of impriſonment; and here is no *judgment* " at all, only a conviction. They ought to " have gone on and adjudged the forfeiture. " Therefore on both theſe objections this " conviction ought to be quaſhed; for, how- " ever uſeful a ſtatute this may be for the " benefit of trade, yet the juſtices muſt con- " vict according to law."

Mr. J. Denniſon concurred in both points. As to the third objection: the time, the duration

ration of the commitment, ought to be aſcertained upon the conviction. The ſtatute does not fix it; it only ſays, "for any time not *exceeding* ſix months."

Mr. J. Wilmot concurred in both. As to the third objection: A conviction is equal to a verdict and judgment; but this is a verdict without a judgment. In the caſe of *R. v. Hawkes* [1], it was ſettled, "that there muſt be "a judgment of forfeiture." It was a conviction for deer-ſtealing, on 3 & 4 W. & M. c. 10. and there, though the penalty was certain, and though the act of parliament diſtributes the forfeiture, yet it was holden that there muſt be a judgment to levy it; for every execution muſt be founded on a judgment. The caſes of *Regina v. Wingrave* [k], and *Regina v. Serle*, in B. R. were both quoted by Mr. Fazakerly in ſupport of the exception.

[1] Hil. 3 G. II. B. R.

[k] H. 2 An. B.R.

There was alſo a caſe in Trin. 9 G. I. B. R. *Rex v. Aſhton* [1], upon a conviction for deſtroying fruit-trees, contrary to 1 G. I. c. 48. The words of the conviction are, "*igitur conſideratum eſt per nos quod convictus eſt.*" The Court held there ought to be a judgment *quod forisfaciat*, or *quod committatur*. But this is

[1] Vid. ante.

is a much ſtronger caſe; becauſe here is a diſcretion to commit, either to the houſe of correction, there to remain and to be kept at hard labour for any time not exceeding three months; or to the common gaol of the county, &c. as they ſhall ſee cauſe, there to remain without bail or mainprize for any time not exceeding three months. Conviction quaſhed *.

As to the diſtribution of the forfeiture, it ſhould ſeem there need not be any ſtated by the juſtice, where the ſtatute expreſsly gives it in certain proportions.

In *Reg. v. Barret* [m], the fourth objection was, that it ſays, "quod convictus eſt et forisfaciet "ſummam 20 s. juxta formam ſtatuti," without making a diſtribution, which ought to be 10 s. to the party grieved, 10 s. to the poor, &c. But the Court held it was well enough.

[m] Salk. 383. Vid. ante.

* The caſe of *R. v. Aſhton*, as cited by Mr. J. Wilmot, is very different from the report of it in 8 Modern (as above given), and probably Mr. J. Wilmot's ſtatement is the right one. But at all events, *that* caſe is no way contrary to the preſent; for there the quantum of puniſhment is exactly limited by the ſtatute.

But

But where juſtices are required by a penal ſtatute to diſtribute the penalty on conviction amongſt certain perſons, *according to their diſcretion*, an adjudication that the forfeiture be diſpoſed of "*as the law directs*" is bad; for in ſuch caſes the juſtice or juſtices ſhould adjudge what the ſeveral proportions ſhall be [n].

[n] *R. v. Dimſey.* Mich. 28 G. III. 2 Term. Rep. 96.

Where a ſtatute ſays, that "upon non-payment of the penalty and coſts, the offender "ſhall be committed for ſuch a time, or until the penalty and *charges* ſhall be paid," (which is the caſe of 6 G. I. c. 48.) and the conviction adjudges him to be impriſoned a certain time, *or* until the forfeiture, *together with the charges*, previous to and attending the ſaid conviction, be paid, but does not aſcertain what the charges are, it is bad [o].

[o] *R. v. Abraham Hall.* Cowp. 60.

PRECEDENTS.

PRECEDENTS*.

Auctioneer †.

Rex. v. Mathew Vaſey. Conviction on the Auction Act, 17 G.III. c. 50. for ſelling goods without having taken out the licence therein required.

Information.

Borough of Reading in the County of Berks. } BE it remembered, that on the 27th day of December, in the 16th year of the reign of our ſovereign lord George the Third now King of Great-Britain, at the borough of Reading aforeſaid, in the ſaid county of Berks, William Pearce, one of his majeſty's collectors of exciſe, in his proper perſon, cometh before us Edward Skeate White, mayor of the ſaid borough, and John Richards, eſq; two of the juſtices of our ſaid lord the king, aſſigned to keep the peace of the ſaid lord the king ‡ *within* the ſaid borough, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanours, within the ſaid borough committed;

* Note. Several of the caſes in the preceding treatiſe may be conſidered as precedents, the convictions being ſtated at large in them.

† This, and one or two other precedents in the collection, have lately got into print from another channel; but, as the book in which they are inſerted contains chiefly indictments, and is not likely to be in the hands of country magiſtrates, I did not think fit to omit them.

‡ Qu. Whether an objection might not have been made to this part on the old caſes; and vid. R. v. Dobbyn, treatiſe, p. 18. and R. v. Landen, ib. p. 20. but though it is not probable the Court would carry ſuch an objection further than it has been carried in the firſt of the above caſes, it is ſafeſt to ſay, "in *and for*," &c.

mitted; and as well for our ſaid lord the king, as for himſelf, in this behalf, giveth us the ſaid juſtices to underſtand and be informed, that Matthew Vaſey, after the 29th day of September, in the year of our Lord 1777, to wit, on the ſaid 27th day of December, in the 18th year of the reign of our ſaid lord the now king, in the ſaid year of our Lord 1777, at the pariſh of St. Lawrence, in the ſaid borough of Reading, in the county of Berks, did, in the capacity of an auctioneer, put up to publick ſale, by way of auction, and did then and there vend and ſell by public ſale, by way of auction, divers goods and effects of the ſaid M. V. without firſt taking out a licence in the manner preſcribed by the ſtatute in that caſe lately made and provided, contrary to the form of the ſtatute in that caſe made and provided. Whereby, and by force of the ſaid ſtatute, the ſaid M. V. hath, for his ſaid offence, forfeited the ſum of 50l.; one moiety thereof (all neceſſary charges for the recovery thereof being firſt deducted) to his ſaid majeſty, and the other moiety to the ſaid W. P. and prays that the ſaid M. V. may be convicted of the ſaid offence according to the ſtatute in that caſe made and provided. And afterwards, on the 27th day of December, in the 18th year of the reign of our ſaid lord the now king, at the borough of R. aforeſaid, the ſaid M. V. having been previouſly ſummoned in purſuance of our ſum-

mons iſſued for that purpoſe to appear before us the ſaid Edward Skeate White and John Richards, ſo being ſuch juſtices as aforeſaid at this time, to anſwer the matter of complaint contained in the ſaid information, he the ſaid M. V. appears before us the ſaid juſtices, to anſwer and make defence to the matters contained in the ſaid information, and having heard the ſame, the ſaid M. V. is aſked by us the ſaid juſtices, if he can ſay any thing for himſelf why he ſhould not be convicted of the premiſes above charged upon him in form aforeſaid. And thereupon he ſays, that he is not guilty of the ſaid offence. Whereupon we the ſaid E. S. W. and J. R. ſo being ſuch juſtices as aforeſaid, do now proceed to examine into the truth of the ſaid complaint contained in the ſaid information, in the preſence and hearing as well of the ſaid W. P. as of the ſaid M. V. And thereupon on the ſame day and year laſt mentioned, at the borough of R. aforeſaid, George Faithful, a credible witneſs in this behalf, comes in his proper perſon before us, ſo being ſuch juſtices as aforeſaid, to prove the ſaid charge contained in the ſaid information againſt the ſaid M. V. and is now here by us the ſaid juſtices ſworn, and does before us the ſaid juſtices take his corporal oath upon the holy goſpel of God to ſpeak the truth, the whole truth, and nothing but the truth, of and upon the matters contained in the ſaid information,

Apppearance of defendant in purſuance of a ſummons.

Plea, not guilty.

Witneſs appears and is ſworn.

mation, we having adminiſtered, and * having a competent power to adminiſter, ſuch oath to him in that behalf. And the ſaid G. F. being ſo ſworn, does on his ſaid oath ſay and depoſe, in the preſence and hearing of the ſaid M. V. that on this 27th day of December, in the year of our Lord 1777, he ſaw the ſaid M V. in the market-place, in time of market, in the pariſh of St. Lawrence, in the borough of R. in the county of Berks, mounted in a cart or roſtrum, putting up goods to public ſale by way of auction and the ſaid M. V. did then and there ſell publicly ſeveral goods by way of auction, and outcry to the perſons then and there aſſembled, he the ſaid M. V. acting therein as an auctioneer; and that the deponent then and there bought of the ſaid M. V. by way of auction at the ſaid ſale, one lot of goods or wares of the ſaid M. V. containing ſeveral articles, that is to ſay, two knives, a razor and razor-caſe, and one comb, for which this deponent, being beſt or higheſt bidder, paid to the ſaid M. V. one ſhilling and one penny. And the ſaid M. V. does not produce any evidence to contradict the proof aforeſaid. Wherefore it manifeſtly appears to us the ſaid juſtices, that the ſaid M. V. is guilty of the premiſes charged upon him by the ſaid infor-

Evidence.

Judgment.

* This ſtatement, "that the juſtices had power to adminiſter "the oath," is in moſt of the precedents. But, Q. Whether it be neceſſary? In indictments for perjury (which ſeem to have occaſioned its introduction here) the *giſt of the offence* is the oath; which perhaps makes that caſe a different one from this.

mation. It is therefore conſidered and adjudged by us the ſaid juſtices, that the ſaid M. V. be convicted, and he is accordingly convicted, of the offence charged upon him by the ſaid information. And we do hereby adjudge, Forfeiture. that the ſaid M. V. for the ſaid offence, hath forfeited the ſum of 50l. of lawful money of Great-Britain; but we do mitigate the ſame Mitigation of it. to the ſum of 5l. and do adjudge and order that the ſaid M. V. do pay the ſaid ſum of 5l. * to be diſtributed as the law directs. In witneſs whereof we the ſaid juſtices to this preſent conviction have ſet our hands and ſeals at the borough of R. aforeſaid, in the ſaid county, the 27th day of December, in the 18th year of the reign of our ſaid lord the king, and in the year of our Lord 1777.

E. S. W. (L. S.)
J. R. (L. S.)

The foregoing conviction having been removed into the court of K. B. two objections were taken to it:

Firſt, It is not ſtated whether the offence was committed in or out of the *bills of mortality*, which ought to have been expreſſed;

* This is right where the ſtatute itſelf diſtributes it, and does not leave it to the diſcretion of the juſtice; otherwiſe the diſtribution ſhould be particularly ſet out. Vide treatiſe, title Judgment.

becauſe the act impoſes different penalties upon unlicenſed auctioneers trading within or without that diſtrict; and a circumſtance that ſo materially varies the offence ought to be ſtated in the conviction.

Secondly, The information charges the defendant with having ſold goods *in the capacity of an auctioneer*, but neither that nor the evidence alledges him *to be one*; for the witneſs only ſwears to a ſingle act of trading, ſo that he is not ſhewn to be ſuch a perſon as ought to take out a licence. To this point the caſe of *Rex v. Little* * was cited, in which the Court held, that a ſingle act of trading did not prove a man to be ſuch a hawker and pedlar as ought to take out a licence.

Lord M. ſaid, there was nothing in either objection. "The fact is ſaid to have been "committed at Reading, in the county of "Berks, which ſufficiently ſhews it to be out "of the bills of mortality; for the Court muſt "take notice of the known diviſions of the "kingdom.

"As to the other objection; this caſe is very "different from that of a hawker and pedlar. "*Going about and ſelling* is neceſſary to make a "man a hawker and pedlar; but here a ſingle "act was enough to bring a man within the "ſtatute."

* Vid. treatiſe, title Confeſſion.

The

The reſt of the Court were of the ſame opinion. On the firſt point Mr. J. Buller cited *Rex. v. Theed** on the Candle Act. He, however, ſeemed to think, that, if the conviction had been for the *higher* penalty, it might have been neceſſary expreſsly to alledge the fact to have been committed within the bills of mortality.

As to the ſecond objection, he ſaid, "A ſale "by auction is a known and certain term. But "the witneſs goes further, and ſtates it in ſuch "a manner as clearly ſhews it to be within "the act."

The Court therefore unanimouſly confirmed the above conviction.

Excise. Glass.

For not paying the exciſe duty on materials and metal for making flint glaſs, by which a forfeiture of double the value is incurred. See 19 G. 2. c. 12. ſ. 13 & 14.

City and County of Briſtol. } BE it remembered, that this day of in the 13th year of the reign of our ſovereign lord George the Third that now is, at the Council-houſe in the ſaid city of Briſtol, John Barrett, of the ſaid city and county, gentleman, in his proper perſon, cometh before us R. G. mayor of the ſaid city, R. F. J. B. and E. W. four of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king, and alſo to hear, &c. in the ſaid city and county

* Vid. treatiſe, title Information, p. 50.

Inform. tion. committed, and giveth us the ſaid juſtices to underſtand and be informed, that at ſeveral times between the 3d day of May and the 21ſt day of June now laſt paſt, in the pariſh of T. in the city of Briſtol, R. C. R. R. and C. F. partners at a glaſs-houſe there, belonging to and uſed by them, did make uſe of thirty hundred three quarters and ſeventeen pounds weight of materials or metal for the making of white or flint glaſs; and that there did accrue and become due to his ſaid majeſty from the ſaid R. C. R. R. and C. F. for the duty of the ſaid materials and metal made into glaſs as aforeſaid, £. 14. 8*s*. 5*d*. of lawful, &c. which ſum ſo accrued, or any part thereof, the ſaid R. C. &c. &c. have not paid or cleared off, to or for the uſe of his ſaid majeſty, within ſix weeks next after they, according to the form of the ſtatute, did make or ought to have made their entry or entries of the ſaid materials and metal made into glaſs as aforeſaid, or any part thereof, or at any time ſince, but the ſame yet remains wholly due and unpaid, contrary to the form of the ſtatute, &c. whereby they have forfeited double the value of the ſaid duty remaining unpaid as aforeſaid, that is to ſay, £. 28. 16*s*. 10*d*. of like lawful money. And thereupon the ſaid J. Barrett humbly prays judgment of us the ſaid juſtices in the premiſes, and that the ſaid R. C. &c. may be

ſummoned

ſummoned to anſwer the ſaid premiſes, and to make defence thereto before us the ſaid juſtices. R. G. mayor, R. F. E. W.
J. Barret.

Whereupon we the ſaid juſtices do accordingly iſſue out our ſummons to the ſaid R. C. R. R. and C. F. requiring them to appear before us at the Council-houſe aforeſaid, on the day of the ſame month of to anſwer to the ſaid premiſes, and to make defence thereto before us. Whereupon afterwards, to wit, on the day of in the 14th year, &c. at the Council-houſe in the city of B. aforeſaid, the ſaid R. C. after having been duly ſummoned in this behalf, appears, and is preſent before us the ſaid juſtices to anſwer to the ſaid premiſes, and to make defence thereto; but the ſaid R. R. and C. F. do not, nor doth either of them, appear before us to anſwer or make defence to the premiſes. Nevertheleſs R. W. of the city of B. aforeſaid, officer of exciſe, a credible witneſs in this behalf, on the day and in the place laſt mentioned, cometh before us the juſtices aforeſaid, and before us the ſame juſtices, upon his oath on the holy goſpel of God to him then and there adminiſtered by us the ſaid juſtices depoſeth and ſaith, in the preſence and hearing of the ſaid R. C. that on the day of in

Summons to defendants.

Appearance of one of defendants.

Proof of ſervice of the ſummons on one of the defendants who did not attend.

the year firſt aforeſaid, he the ſaid R. W. did perſonally ſerve the ſaid C. F. with our ſaid ſummons to appear here this ſame day of to anſwer the premiſes; and H. B. of the city of B. aforeſaid, officer of exciſe, another credible witneſs in this behalf, on the day and at the place firſt aforeſaid cometh before us the juſtices aforeſaid, and before us the ſame juſtices, &c. (affidavit of perſonal ſervice upon the other defendant ſtated as above *) to anſwer the premiſes. Whereupon the ſaid R. R. and the ſaid C. F. not appearing here before us in obedience to our ſaid ſummons, and the ſaid information having been heard by the ſaid R. C. he the ſaid R. C. is aſked by us the ſaid juſtices, if he can ſay any thing why the ſaid R. C. R. R. and C. F. ſhould not be convicted of the premiſes above charged upon them in form aforeſaid. And thereupon the ſaid R. C. ſaith, that they are not guilty of the premiſes charged upon them. And thereupon on the ſame laſt-mentioned day and year, at the place laſt aforeſaid, the ſaid R. W. a credible witneſs in this behalf, cometh before us the ſaid juſtices in his proper perſon, and on his corporal oath upon the holy goſpel

Service of the other defendant who did not attend.

Plea of the one defendant who did attend—not guilty.

Evidence of the offence.

* The proof in both theſe inſtances is of *perſonal* ſervice; and query, whether a magiſtrate ought to accept of leſs; that being required in all common law proceedings, unleſs ſpecially diſpenſed with by the Courts.

of God now administered to him by us the said justices, he the said R. W. deposeth and saith in the presence and hearing of the said R. C. concerning the premises in the said information specified, that he the said R. W. being officer of excise, did (at such times) between the 3d day of May and the 21st day of June, in the said 13th year, &c. survey the materials or metals in the glass-house of the said R. C. &c. in the parish of T. in the said city and county of B. and that the said R. C. &c. during the said last-mentioned times, did there make use of thirty hundred three quarters and seventeen pounds weight of materials or metal in the making of white or flint glass; and that there did accrue and become due to his said majesty from the said R. C. &c. for the duty of the said materials and metal made into glass as aforesaid, £. 14. 8s. 5d. of lawful, &c. which sum so accrued, or any part thereof, the said R. C. &c. have not paid or cleared off to or for the use of his said majesty within six weeks next after they, according to the form of the statute, &c. did make or ought to have made their entry or entries of the said materials and metal made into glass as aforesaid, or any part thereof, or at any time since, but the same yet remains wholly due and unpaid. And thereupon, on the part and behalf of the said R. C. R. R. Defence.

and C. F. the ſaid R. C. being called upon by us to ſhew unto us ſufficient cauſe why they ſhould not be convicted of the premiſes, the ſaid R. C. alledges, that he the ſaid R. C. had on the day of laſt paſt *tendered and offered* to pay to the ſaid J. B. the informer aforeſaid, and collector of the ſaid duties, his ſaid arrears of the ſaid duties, to wit, the ſaid ſum of £. 14. 8*s*. 5*d*. within the time above by the ſaid act for the payment of the ſame limited and appointed, which the ſaid J. B. had wholly refuſed to accept of and from the ſaid R. C. Whereupon on the ſame day of in the ſaid 14th year, &c. at the Council-houſe aforeſaid, S. P. of the city of B. gentleman, a credible witneſs in this behalf, cometh before us the ſaid juſtices in his proper perſon, and on his corporal oath upon the holy goſpel of God now adminiſtered to him by us the ſaid juſtices, depoſeth and ſaith, in the preſence and hearing of the ſaid R. C. that he is clerk to the ſaid J. B. the collector of the ſaid duties, and that one J. P. in the preſence of the ſaid S. P. *did weigh twenty-ſix guineas which were offered in payment for the arrears of the ſaid duties, as the ſaid R. C. hath alledged, and that all and every of the ſaid twenty-ſix guineas were light and under the current weight of guineas then in that behalf by the lords commiſſioners of his majeſty's treaſury appointed*

Tender of arrears.

Evidence that the tender was in light guineas.

to

to be used by the collectors of excise *, to wit, under the weight of five pennyweights and three grains each guinea; and that the said R. C. although he received back the said money, did refuse to pay the arrears of £. 14. 8*s.* 5*d.* of the duties aforesaid in any other or different money than in the said guineas so under the then current weight of guineas as aforesaid, although often applied to afterwards by the said collector. And thereupon also on the same day and year last above-mentioned, at the Council-house aforesaid, F. E. of the said city of B. banker, another credible witness in this behalf, cometh before us the said justices in his proper person, and on his corporal oath, &c. (as above) in the presence and hearing of the said R. C. that he is a partner with Messrs. bankers, in the said city of B. *and that the weight of guineas current there since the making of the said late act of parliament in that behalf has been at the rate of five pennyweights and three grains each guinea, and not under.* And also on the same day and year last above-mentioned at the Council-house aforesaid, T. A. of the said city of B. gent. another credible witness in this behalf, cometh before us the said justices, &c. (as above) that he is a servant to certain bankers in S. street, in

Evidence what was the weight of guineas current at Bristol at the time.

* It should seem that the act giving them authority so to do should be here mentioned, as it is afterwards referred to.

the

the ſaid county and city of B. called the *S. ſtreet* bank, and *that the weight of guineas current there ſince the making of the ſaid late act of parliament has been at the rate of five pennyweights and three grains each guinea, and not under.* And alſo on the ſame day and year laſt above-mentioned, at the Council-houſe aforeſaid, J. P. of the ſaid city of B. gent. another credible witneſs in this behalf, cometh, &c. (as above) that he weighed *the ſaid twenty-ſix guineas* ſo as aforeſaid tendered to the ſaid J. B. collector of the duties above herein mentioned, *and that the ſame then and there were under the then current weight, to wit, under the weight of five pennyweights and three grains by each guinea*; and that one W. L. the clerk of the ſaid R. C. by whom the ſaid twenty-ſix guineas were tendered in payment for the duties aforeſaid, for and on the behalf of the ſaid R. C. R. R. and C. F. did not then and there requeſt the ſaid J. B. the ſaid collector, to cut the ſame or any of them, or to have the currency of the ſame determined by the mayor or any other magiſtrate of the ſaid city and county of B.; but the ſaid W. L. then and there aſſerted, that as he the ſaid W. L. had received the ſame for the ſaid R. C. as good guineas, and of due weight, he the ſaid R. C. was determined to paſs away the ſame as good guineas, and of due weight. And the ſaid W. L. then and there received the

Evidence of the perſon who weighed the guineas tendered.

the ſame back, and would not pay any other money. Whereupon all and ſingular the premiſes being heard, and by the ſaid juſtices fully underſtood, and mature deliberation being thereupon had, and no other defence being made on behalf of the ſaid R. C. R. R. and C. F. It is conſidered by us the ſaid juſtices, that the ſaid R. C. R. R. and C. F. are guilty of the premiſes aforeſaid charged upon them in and by the ſaid information, and they are by us accordingly convicted thereof. And we the ſaid juſtices do award and adjudge, that the ſaid R. C. &c. have for their ſaid offence forfeited the ſum of £. 28. 16s. 10d. of lawful, &c. being double the value of the ſaid duty, to be applied according to the form of the ſtatute, &c. In witneſs whereof we the ſaid juſtices to this record of conviction have ſet our hands and ſeals at the city and county of B. aforeſaid, the ſaid day of in the ſaid 14th year, &c. and in the year of our Lord 1771.

Judgment.

R. G. mayor.
R. T.
J. B.
E. W.

Excise. Paper.

Conviction of a paper-maker for removing paper without giving notice to the proper officer.

DURHAM. Be it remembered, that upon the 11th day of June, in the 9th year of the reign of our ſovereign lord George the ſecond, by

2 W. & M. c. 4. ſ. 42. 10 An. c. 19. ſ. 32. 12 An. ſt. 2. c. 9.

by the grace of God of G. B. &c. at Sunderland, in the county palatine of Durham, before us R. R. eſq; and R. B. eſq; two of the juſtices of our ſaid lord the king (one of the quorum) aſſigned to keep the peace of our lord the king in and for the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed within the ſaid county, comes Rawſthorn Bradſhaw, of the pariſh of B. W. in the ſaid county palatine of D. gent. who, as well for our ſovereign lord the king as for himſelf, proſecutes in this part before us, and giveth us the

Information.

ſaid juſtices to underſtand and be informed, that one D. O. of Gibſide Mill, in the pariſh of Whickham, in the ſaid county palatine of D. paper-maker, upon the 14th day of April laſt paſt, and long before, and ever ſince, at G. Mill aforeſaid, in the pariſh of W. aforeſaid, in the ſaid county palatine of D. was, hath been, and yet is, a maker of paper, charged and chargeable with ſeveral rates and duties due and payable to our ſaid ſovereign lord the king by virtue of the ſtatute in ſuch caſe made and provided; and that the ſaid D. O. within three months now laſt paſt, that is to ſay, upon the ſaid 14th day of April, at G. Mill aforeſaid, in the pariſh of W. aforeſaid, in the ſaid county palatine of D. being then ſuch maker of paper as aforeſaid, did remove,

carry,

carry, and ſend away, and did ſuffer to be removed, carried, and ſent away, ſeveral quantities or parcels of paper by him there made, that is to ſay, ſeventeen reams of paper, of which ſaid ſeventeen reams of paper ſo removed, carried, and ſent away, and ſo ſuffered to be removed, carried, and ſent away as aforeſaid, or of any part or parcel thereof, no account had been firſt taken by the proper officer duly appointed in that behalf to take an account of the ſame, from the warehouſe or place where the ſaid ſeventeen reams of paper had been firſt put after the ſaid paper had been dried and fit for uſe. And that before the ſaid removing, carrying, and ſending away the ſaid ſeventeen reams of paper as aforeſaid, no notice whatſoever was or had been ever given to the proper officer in that behalf of the ſaid D. O.'s intention to remove, carry, and ſend away the ſame, or of his intention to ſuffer the ſame to be removed, carried, and ſent away, as by the ſtatute in ſuch caſe made and provided there ought to have been, that the ſaid officer might have taken an account thereof, but that the ſaid D. O. did wholly neglect and omit to give ſuch notice, againſt the form of the ſaid ſtatute. And the ſaid R. B. does further give the ſaid juſtices to underſtand and be informed, that the ſaid D. O. afterwards, to wit, upon the 15th day of April laſt paſt, at G. Mill, in the pariſh of W. aforeſaid,

Information for another quantity of paper.

aforeſaid, in the ſaid county palatine of D. he the ſaid D. O. being then and there a maker of paper, charged and chargeable with ſuch duties as aforeſaid, did remove, carry, &c. (for twelve reams in the ſame form as before) againſt the form of the ſtatute. And thereupon afterwards, that is to ſay, upon the 21ſt day of the ſame month of June, in the 9th year aforeſaid, at 11 o'clock in the forenoon of the ſame day, at S. aforeſaid, in the county palatine of D. aforeſaid, to wit, at the dwelling-houſe of one T. L. being an inn and public-houſe, ſituate in S. aforeſaid, commonly called or known by name or ſign of the Shoulder of Mutton, one T. M. of Smallwell, in the pariſh of W. and county palatine of D. aforeſaid, being a credible witneſs, in his proper perſon cometh before us the ſaid R. R. and R. B. eſqrs. two of the juſtices of our lord the king aſſigned to keep the peace of our ſaid lord the king in and for the ſaid county palatine of D. and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed within the ſaid county, and in due manner taketh his corporal oath upon the holy evangeliſts, before us the ſaid juſtices, to ſpeak the truth touching and concerning the premiſes ſpecified in the ſaid information (we the ſaid juſtices having then and there ſufficient power and authority to adminiſter

Evidence.

miniſter the ſaid oath to the ſaid T. M. in that behalf) and the ſaid T. M. being ſo ſworn as aforeſaid, then and there ſaith, depoſeth, and ſweareth, touching and concerning the premiſes in the ſaid information above ſpecified, that the ſaid D. O. of G. Mill aforeſaid, of the pariſh of W. aforeſaid, in the ſaid county palatine of D. paper-maker, for three months now laſt paſt, was, and during all that time continued to be, a maker of paper at G. Mill aforeſaid, and he the ſaid D. O. within three months now laſt paſt, that is to ſay, on the ſeveral and reſpective days herein-after-mentioned, at G. M. aforeſaid, in the pariſh of W. aforeſaid, in the county palatine of D. aforeſaid, did remove, carry, and ſend away, and ſuffer to be removed, carried, and ſent away, ſeveral quantities and parcels of paper by him there made, that is to ſay, one parcel containing ſeventeen reams, on the 14th day of April now laſt paſt, and another parcel of paper containing twelve reams on the 15th day of the ſame month of April, of which ſaid ſeveral parcels of paper ſo removed, carried, and ſent away, and ſo ſuffered to be removed, carried, and ſent away as aforeſaid, or of either of them, or of any part of them, or of either of them, no account had been firſt taken by the proper officer duly appointed in that behalf to take an account of the ſame, from the warehouſe or place where the ſaid two ſeveral parcels

Notice not given to the officer of excise.

cels of paper had been firſt put after its having been dried and fit for uſe. And that before the ſaid removing, carrying, and ſending away the ſaid two parcels as aforeſaid, no notice whatſoever was or had been ever given to the proper officer in that behalf of the ſaid D. O.'s intention to remove, carry, and ſend away the ſame, or of his intention to ſuffer the ſame to be removed, carried, and ſent away, as by the ſtatute in ſuch caſe made and provided there ought to have been, but that the ſaid D. O. did wholly neglect and omit to give any ſuch notice againſt the form of the ſaid ſtatute.

Summons.

Whereupon the ſaid D. O. having been duly ſerved with a ſummons in that behalf, in order to appear and make his defence againſt the ſaid charges contained in the ſaid information upon the ſaid 21ſt day of June, in the 9th year aforeſaid, at S. aforeſaid, in the county palatine of D. aforeſaid, at the dwelling-houſe of the ſaid T. L. being an inn and public houſe ſituate in S. aforeſaid, commonly called or known by the ſaid name or ſign of the Shoulder of Mutton, before us the ſaid R. R. and R. B. being then and there two of the juſtices of our ſaid lord the king aſſigned to keep the peace of our ſaid lord the king in and for the ſaid county palatine of D. and alſo to hear and determine, &c. (as before) appearing and being preſent, and the cauſe of

Appearance of defendant.

the

the ſaid information, and the information itſelf, and the evidence ſo given thereupon as aforeſaid, being then and there heard and fully underſtood by him the ſaid D. O. he the ſaid D. O. is aſked by us the ſaid juſtices, if he hath or knoweth of any thing to ſay for himſelf why he the ſaid D. O. ought not to be convicted of the premiſes above charged upon him as aforeſaid. And all and ſingular the matters alledged by him the ſaid D. O. in his defence, touching and concerning the premiſes aforeſaid, being heard and fully underſtood by us the ſaid juſtices, becauſe it manifeſtly appears to us the ſaid juſtices, that the ſaid D. O. is guilty of the premiſes aforeſaid in the ſaid information above ſpecified and charged upon him in manner and form as in the ſaid information is above charged; it is therefore conſidered by us the juſtices aforeſaid, that the ſaid D. O. by and upon the teſtimony of the ſaid T. M. being a credible witneſs as aforeſaid, upon his ſaid oath ſo taken before the ſaid juſtices as aforeſaid, be and he is hereby convicted of the premiſes in the ſaid information above ſpecified and charged upon him as aforeſaid, according to the form of the ſaid ſtatute in that caſe made and provided. And that the ſaid D. O. do forfeit and loſe the ſeveral ſums of 20*l.* and 20*l.* of lawful money of Great Britain, that is to ſay,

Judgment.

Forfeitures.

ſay, the ſum of 20*l.* of lawful money, &c. for the offence committed by him the ſaid D. O. upon the ſaid 14th day of April as aforeſaid, and alſo the further ſum of 20*l.* of like lawful money, for the offence committed by him the ſaid D. O. upon the ſaid 15th day of April as aforeſaid, amounting in the whole to the ſum of 40*l.* of like lawful money. Which ſaid ſum of 40*l.* we the ſaid juſtices do mitigate, leſſen, and reduce to the ſum of 10*l.* according to the form and effect of the ſaid ſtatute. In teſtimony whereof we the ſaid juſtices have ſet our reſpective hands and ſeals to this record, at S. aforeſaid, in the county palatine of D. aforeſaid (to wit) at the ſaid dwelling-houſe of him the ſaid T. L. being an inn or public houſe, ſituate in S. aforeſaid, commonly called or known by the name or ſign of the Shoulder of Mutton as aforeſaid, on the ſaid 21ſt day of June, in the 9th year aforeſaid.

Mitigation of them.

R. R. (L. S.)
R. B. (L. S.)

Order of the Quarter Seſſions on an appeal from the above conviction ſetting it aſide.

DURHAM, to wit. At the general quarter ſeſſions of the peace held at the city of Durham, in and for the county of Durham, on Wedneſday, the 16th day of July, in the 9th year of the reign of our ſovereign lord George the Second, by the grace of God, &c. before

before T. H. esq; G. B. esq; &c. and others their associates, justices of our said sovereign lord the king assigned to keep the peace in the said county, and to hear and determine divers felonies, trespasses, and other misdemeanors done and committed within the same county. Whereas D. O. of Gibside, in this county, paper-maker, hath appealed to his majesty's justices of the peace at their general quarter sessions of the peace assembled, from a judgment or sentence given against him by R. R. esq; and R. B. esq; two of his majesty's justices of the peace for the said county, for the penalty or forfeiture of 10*l.* alledged to be incurred by the said D. O. for and by reason of his removing and carrying away paper before the same was first taken an account of by the proper officer, contrary to the statute in that case made and provided. And after hearing the said appeal and examinations of several witnesses, it is thought fit and accordingly so ordered by the right worshipful his majesty's justices of the peace at this general quarter sessions of the peace assembled (being the next general quarter sessions of the peace after such judgment or sentence given) *that the said appeal be allowed*, and the judgment or sentence so given by the said R. R. and R. B. against the said D. O. as

aforeſaid, be ſet aſide and reverſed, and the penalty diſcharged.

By the Court,

J. M. *Deputy Clerk of the Peace.*

N.B. This reverſal muſt have been upon the merits, as that is the proper ſubject of an appeal to ſeſſions.

Fiſheries.

Rex v. Green.

Conviction on 5 G. III. c. 14. for attempting to take fiſh in a river without the conſent of the owner.

SOUTHAMPTON, to wit. Be it remembered, that on the 3d day of September, in the 23d year of the reign of our ſovereign lord George the Third, by the grace of God, &c. and in the year of our Lord 1783, at New Alresford, in the county of Southampton, James Morley, of the pariſh of Ovington, in the ſaid county, labourer, a credible witneſs, and Sir Henry Tichborne, of Tichborne, in the ſaid county, bart. came in their proper perſons before us Thomas Baker and William Harris, eſqrs. two of the juſtices of our ſaid lord the king aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, and reſiding near to the place where the offence herein after mentioned

tioned was committed; and the ſaid John Morley on his corporal oath then and there gave us the ſaid juſtices to underſtand and be informed, that on Tueſday the 12th day of Auguſt laſt paſt, about ſeven o'clock in the evening, he the ſaid J. M. ſaw Harry Green, of the pariſh of New Alresford, gent. in the pariſh of Ovington aforeſaid, in the county aforeſaid, attempt to take, kill, and deſtroy fiſh with a fiſhing rod and a fiſhing line, in that part of a certain river in Ovington aforeſaid, in the county aforeſaid, which runneth between the manors of Ovington and Old Alresford, in the ſaid county, *without the conſent of the ſaid Sir H. Tichborne, the owner of the ſaid part of the ſaid river*, the ſaid part of the ſaid river being then private property, and not being in any park or paddock, or in any garden, orchard, or yard adjoining or belonging to any dwelling-houſe, but being in other incloſed ground which then was private property, contrary to the form of the ſtatute made in the 5th year of his ſaid majeſty king George the Third, intituled "An act for the "more effectual preſervation of fiſh in fiſh "ponds and other waters, and conies in war-"rens, and for preventing the damage done "to ſea banks within the county of Lincoln, "by breeding conies therein," he the ſaid H. Green not then having any juſt right to

Information on oath required by the ſtatute.

take, kill, or carry away, or to attempt to take, kill, or carry away any ſuch fiſh *. And further, that he the ſaid J. Morley knew that the ſaid Harry Green had not the conſent of the ſaid Sir H. Tichborne to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river, becauſe he the ſaid J. Morley, by the orders of Sir H. Tichborne ſome ſhort time before the ſaid Harry Green ſo as aforeſaid attempted to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river, did give notice to the ſaid H. Green, that he ſhould not fiſh in the ſaid part of the ſaid river, and that he the ſaid J. Morley knew that the ſaid Sir H. Tichborne was the true and lawful owner of the ſaid part of the ſaid river, becauſe he the ſaid J. Morley, for ſeveral years before the ſaid H. Green ſo as aforeſaid attempted to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river, † *rented the fiſhery of the ſaid part of the ſaid river of the ſaid Sir H. Tichborne*; and becauſe at the time when the ſaid H. Green ſo as

* Here it ſhould ſeem the two judges who were againſt the conviction thought the charge (or information) ended and the evidence begun.

† The paſſages here in Italics, and referred to, are the only ones that imply that Sir H. T. was owner of the *fiſhery*; and even in theſe paſſages it is (as was obſerved by the judges) only *argument*, and not evidence. Vid. R. v. Corden, Burr. treatiſe, p. 17. that this, or proof of his diſſent is neceſſary.

aforeſaid

aforeſaid attempted to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river, he the ſaid J. Morley * *was employed by the ſaid Sir H. Tichborne to take care of the fiſhery* of the ſaid part of the ſaid river, he the ſaid Sir H. Tichborne having then * *and for ſome time before taken the ſaid fiſhery* of the ſaid part of the ſaid river into his own hands. And the ſaid Sir H. Tichborne on his corporal oath complained unto us the ſaid juſtices, and gave us to underſtand, that before and at the time when the ſaid H. Green attempted to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river, in ſuch manner as is hereinbefore ſet forth by the ſaid J. Morley, he the ſaid Sir H. Tichborne was the true and lawful owner of the ſaid part of the ſaid river, and that the ſaid H. Green never had the conſent of the ſaid Sir H. Tichborne to take, kill, or deſtroy, or to attempt to take, kill, or deſtroy any fiſh in the ſaid part of the ſaid river, and therefore the ſaid Sir H. Tichborne prayed that upon the aforeſaid information of the ſaid J. Morley, and upon the complaint of him the ſaid Sir H. Tichborne, the ſaid H. Green might be convicted in the penalty of 5*l.* according to the form of the ſtatute aforeſaid. Whereupon afterwards, to wit, upon the 9th

Complaint of the owner.

* See note † preceding page.

Appearance of defendant in conſequence of a warrant.

day of September, in the year aforeſaid, he the ſaid Harry Green appearing before us the ſaid juſtices, in purſuance of our warrant, at New Alresford aforeſaid, in the county aforeſaid, to make his defence againſt the ſaid charge contained in the ſaid information, and *having heard the ſame read*, and the ſaid J. Morley alſo now appearing before us the ſaid juſtices, and *having been now again ſworn* before us the ſaid juſtices to the truth of his ſaid information, in the preſence of the ſaid H. Green *, and the ſaid J. Morley having now upon his oath declared, that at the time when the ſaid H. Green ſo as aforeſaid attempted to take, kill, and deſtroy fiſh in the ſaid part of the ſaid river, the ſaid Sir H. T. was the true and lawful owner of the ſaid part of the ſaid river, and that the *ſaid part of the ſaid river* then was the private property of the ſaid Sir H. T. And the ſaid Harry Green having now in the preſence of us the ſaid juſtices aſked the ſaid J. Morley, and alſo the ſaid Sir H. T. (who now alſo appears before us) ſuch queſtions as he the ſaid H. Green thought proper, he the ſaid H. Green is aſked by us the ſaid juſtices, if he can ſay any thing for himſelf why he ſhould not be convicted of

Defendant being aſked, does not ſay any thing in his defence.

* The information being upon oath, and that oath reſworn in the defendant's preſence, query, whether any further evidence was neceſſary?

the

the offence charged upon him in form aforeſaid. And becauſe the ſaid H. Green doth not, nor can ſay any thing in his own defence touching or concerning the offence ſo charged upon him as aforeſaid, and becauſe all and ſingular the premiſes being fully heard and underſtood by us the ſaid juſtices, it manifeſtly appears to us, that the ſaid H. Green is guilty *of the above-mentioned offence* laid to his charge as aforeſaid; and becauſe the ſaid Sir H. T. hath now prayed that the ſaid H. Green may be convicted of the ſaid offence laid to his charge as aforeſaid. It is therefore by us the ſaid juſtices, upon the aforeſaid information and evidence of the ſaid J. Morley, and upon the complaint of the ſaid Sir H. T. that the ſaid H. Green had not the conſent of the ſaid Sir H. T. to take, kill, or deſtroy fiſh, or to attempt to take, kill, or deſtroy fiſh in the ſaid part of the ſaid river (without any regard being paid by us the ſaid juſtices to the evidence of the ſaid Sir H. T. that the ſaid part of the ſaid river was his private property) adjudged that the ſaid H. Green *is guilty of the aforeſaid offence*, and that he the ſaid H. Green be and he is hereby convicted of the ſaid offence, according to the ſtatute aforeſaid. And we the ſaid juſtices do award and adjudge, that for the offence aforeſaid, he the ſaid H. Green hath forfeited the ſum of 5*l.* of

Judgment.

Forfeiture.

5*l.* of lawful money of Great-Britain, to be paid, as the ſtatute doth direct, to us the ſaid juſtices, for the uſe of the ſaid Sir H. T. *as owner of the ſaid part of the ſaid river* where the ſaid offence was committed, &c.

The above conviction having been removed into the King's Bench by certiorari, Mr. Lawrence moved to quaſh it upon three objections:

Firſt, It does not appear in evidence that Sir H. T. was owner of the *fiſhery* of that part of the river. He is only ſaid to be owner of *the ſaid part of the ſaid river*. Now a man may have the *ſoil* of a river, and yet not the *fiſhery* *.

Secondly, It is not ſufficiently ſtated *where* the offence was committed. Some certain place ſhould have been named, that it may appear not to have been the defendant's own land. (This objection, however, was not much relied on.)

Third objection, The penalty is adjudged to Sir H. Tichborne as owner of the *river*, not as owner of the *fiſhery*.

* Salk. 637. was cited, where fiſheries are diſtinguiſhed into three ſorts, ſeparalis piſcaria, where the owner of the ſoil is likewiſe owner of the fiſhery; libra piſcaria, where a man has the right to the *fiſh*, but not to the ſoil; and communis piſcaria, which is like any other right of common.

Mr.

Mr. Morris in ſupport of the conviction, inſiſted that this offence ſufficiently appears to be a gravamen to this owner of the fiſhery, and is ſubſtantially averred to be ſo. The whole of the evidence is *charge*; and by that evidence it appears that Sir H. T. was owner not only of the *river*, but of the *fiſhery*.

As to the laſt objection, he held it to be ſufficient that Sir H. T. had been before proved to be owner of the fiſhery.

The firſt objection ſeemed to have moſt weight with the Court. Upon that they were equally divided in opinion. Lord Mansfield and Mr. Juſtice Buller were of opinion, that as the act requires a complaint upon oath, the whole of the evidence was charge; and that the whole of the evidence contained a ſufficient allegation that Sir H. Tichborne was owner of the *fiſhery*.

Mr. J. Willes and Mr. J. Aſhurſt inclined to think the conviction bad; for it ſeemed to them that the whole evidence was not charge, but that the charge ended with the words *contrary to the form of the ſtatute, &c.*

They alſo obſerved, that what the witneſs ſwears of his having "rented the fiſhery," is only put argumentatively, to prove Sir H. T. to be owner of the *river*, not of the *fiſhery*; but that it ought to have been a poſitive allegation.

Nothing further appears to have been done upon this conviction. The point therefore upon which the judges differed muſt be conſidered as undecided. But (if under ſuch circumſtances it were proper to hazard an opinion) one ſhould incline to think, that when an information upon oath has been given under this act of parliament, and the whole of it is reſworn (in the defendant's preſence) in order to be made evidence, there is no ſeparating it, and ſaying that a part is to be conſidered as evidence only, and a part as charge or information. But on the other hand, one can hardly think the Court would (on mature deliberation) deem ſuch an argumentative inference as here appears of Sir H. T. being owner of the fiſhery, as ſufficiently poſitive, either in the information or the evidence.

The above precedent may, however, be uſeful to magiſtrates on proſecutions before them under this act of parliament, provided they avoid this objection, by requiring poſitive proof who is owner of the *fiſhery*, and ſtating it in direct terms.

Game.

Conviction for keeping greyhounds, and courſing hares, not being a qualified perſon.

WILTSHIRE, to wit. Be it remembered, that on the 25th day of September, in the 9th year of the reign of his majeſty king

king George the Third, of Great-Britain, &c. at Enford, in the county of Wilts, Thomas Butt, of Everly, in the ſaid county of Wilts, yeoman, in his proper perſon cometh before us W. Beach, Edw. Poore, and John Poore, eſqrs. three of the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county of Wilts, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors done and committed in the ſaid county of Wilts, and now here giveth us the ſaid juſtices to underſtand, that one Thomas Chandler, of the pariſh of Uphaven, in the county of Wilts aforeſaid, huſbandman, within three months now laſt paſt, to wit, on the 22d day of September, in the ſaid 9th year of the reign of our ſaid ſovereign lord the king that now is, the ſaid T. C. not having then lands or tenements, or any other eſtate of inheritance of the clear yearly value of 100*l.* or for term of life, nor any leaſe or leaſes for ninety-nine years or any longer term of the clear yearly value of £. 150, nor then being the ſon and heir apparent of an eſq; or * other perſon of higher degree, † *nor then being the lord of* Information.

* Here the word "of" is not inſerted, as it is Burn's precedent. Vid. Jones v. Smart, 1 Term. Rep.

† This being only a conſtructive qualification, it has been held not neceſſary to negative it. R. v. Pickles, Mich. 19 G. II. cited in R. v. Jarvis, 1 Burr. 150. Vid. treatiſe, title Information.

any

any manor or royalty, nor then being the owner or keeper of any foreſt, park, chaſe, or warren, * *nor then being game-keeper of any lord or lady of any lordſhip or manor, nor then being truly and properly a ſervant of or to any lord or lady of any lordſhip or manor, nor then being immediately employed and appointed to take and kill the game for the ſole uſe and immediate benefit of ſuch lord or lady*, nor being in any other manner qualified, empowered, licenſed, or authorized by the laws of this realm, either to take, kill, or deſtroy any ſort of game whatſoever, or to keep or uſe any greyhounds for that purpoſe, did, at the pariſh of Uphaven, in the county of Wilts aforeſaid, keep and uſe † three dogs called greyhounds, to kill and deſtroy the game, againſt the form of the ſtatute in ſuch caſe made and provided. Whereupon the ſaid T. C. afterwards, to wit, on the 26th day of September, in the 9th year aforeſaid, at Uphaven aforeſaid, had notice of the ſaid information, and of the offence therein charged upon him as aforeſaid, and was then and there by us the ſaid juſtices in due manner ſum-

Summons.

* See note † preceding page.

† R. v. Hartley, Cald. Rep. part II. p. 175. This deſcription of a greyhound held ſufficient. Vid. treatiſe, title Evidence.

moned

moned to appear before us the ſaid juſtices, at E. aforeſaid in the county of Wilts aforeſaid, on the 2d day of October, in the 9th year aforeſaid, to make his defence againſt the ſaid charge contained in the information aforeſaid: And thereupon afterwards, that is to ſay, on the ſaid 2d day of October, in the 9th year of the reign of our ſaid ſovereign lord the king, at E. in the county of Wilts aforeſaid, he the ſaid T. C. being duly ſummoned as aforeſaid in this behalf, before us the juſtices aforeſaid, appeareth and is preſent in order to make his defence againſt the ſaid charge contained in the ſaid information; and having heard the ſame, he the ſaid T. C. is aſked by us the ſaid juſtices if he can ſay any thing for himſelf why he the ſaid T. C. ſhould not be convicted of the premiſes above charged upon him in form aforeſaid, who pleadeth and ſaith, that he admits he was not qualified to kill game, and that he was out on a piece of down in the ſaid pariſh of Uphaven, on the ſaid 22d day, with three greyhound dogs, and one ſpaniel dog, but that all the ſaid dogs were not his property; but does not ſhew to us the ſaid juſtices any ſufficient cauſe why he ſhould not be convicted of the offence in the ſaid information above contained againſt him.

Appearance of defendant.

Plea or defence.

And

Evidence of the fact.

* And further at the ſame time and place, to wit, on the 2d day of October, in the year aforeſaid, at E. aforeſaid, within the ſaid county, one credible witneſs, to wit, Levi Woodham, of the pariſh of Everly, in the county of Wilts, huſbandman, cometh before us the juſtices aforeſaid, and before us the ſame juſtices, in the preſence of the ſaid T. C. upon his oath on the holy goſpel of God, to him then and there by us the juſtices aforeſaid adminiſtered (we the ſaid juſtices being duly authorized and empowered to adminiſter the ſaid oath to the ſaid L. W. in this behalf) depoſeth, ſweareth, and on his oath affirmeth and ſaith, in the preſence and hearing of the ſaid T. C. that the ſaid T. C. on the 22d day of September aforeſaid, in the year aforeſaid, at the pariſh of Uphaven aforeſaid, in the county aforeſaid, *did keep and uſe three greyhounds to kill and deſtroy the game, and that he then and there ſaw the ſaid T. C. walking acroſs the ſaid piece of down, the ſame being a place where hares uſually lie, with the ſaid three greyhound dogs and one ſpaniel dog, with a pole*

* Here though the defence itſelf ſeems to contain a confeſſion of the fact of *uſing*, &c. (that being the offence chiefly relied on) particular evidence of it is ſtated.

or

or ſtick in his hand. * And the ſaid T. C. then, to wit, on the 22d day of September aforeſaid, had not any lands or tenements, &c. (negativing all the qualifications exactly as in the information) nor in any other manner qualified, empowered, licenſed, or authorized by the laws of this realm, to take, kill, or deſtroy any ſort of game, or to keep or uſe any greyhounds for that purpoſe. Whereupon, and upon hearing and duly examining the whole matter aforeſaid, it manifeſtly appears to us the ſaid juſtices, that the ſaid T. C. was not on the 22d day of September aforeſaid, in any manner qualified, empowered, licenſed, or authorized, by or according to the laws of this realm, to keep or uſe any greyhounds to kill and deſtroy the game, and that the ſaid T. C. is guilty of the premiſes above charged upon him, in and by the information aforeſaid. Therefore the ſaid T. C. on the ſaid 2d day of October, in the year aforeſaid, at E. aforeſaid, in the county aforeſaid, before us the juſtices aforeſaid, by the teſtimony of the ſaid L. W. a credible witneſs as aforeſaid, according to the form of the ſtatute aforeſaid, is convicted of the offence aforeſaid, and hath forfeited the ſum Judgment.

* Query, if this be neceſſary? and vid. R. v. Crowther, 1 Term. Rep. 175. and treatiſe, title Evidence, p. 80.

of 5*l.* of lawful money of G. B. to be diſtributed as the ſtatute aforeſaid doth direct. In witneſs whereof we the ſaid juſtices aforeſaid, to this preſent record of conviction have ſet our hands and ſeals, at E. aforeſaid, in the county aforeſaid, the ſaid 2d day of October, in the 9th year of the reign of our lord the king that now is.

(Settled by Mr. Dunning.)

Land Tax.

Conviction for not ſerving the office of aſſeſſor of the land tax.

Hundred of Bampton, in the County of Oxford. } BE it remembered, that at the meeting of us A. B. C. D. and E. F. named and appointed commiſſioners in an act of parliament made and paſſed in the 15th year of his majeſty's reign, intituled, "An act for granting an aid "to his majeſty, by a Land Tax to be raiſed "in Great-Britain, for the ſervice of the year "1775," for putting in execution the ſaid act, and acting as ſuch commiſſioners in and for the hundred of Bampton, in the county of Oxford, held on the day of in the 15th year of his preſent majeſty's reign, at the George Inn, in Burford, within the hundred of Bampton, the ſame place being the moſt uſual and common place of our meeting within the hundred of Bampton, we the

ſaid

ſaid commiſſioners directed our joint precept, bearing date the ſame day and year aforeſaid, to John Doe, yeoman, then an inhabitant of the hamlet or liberty of Holwell, within the ſaid hundred of B. whom we the ſaid commiſſioners in our diſcretion thought moſt convenient to be one of the aſſeſſors of all and every the rates and ſums of money impoſed on the ſaid hamlet and liberty of Holwell, by virtue of the ſaid act, requiring him to appear before us, commiſſioners as aforeſaid, at the George Inn, at Burford aforeſaid, within the ſaid hundred of B. on the day of then next enſuing, the ſame day not exceeding eight days after the date of our ſaid precept, according to the ſaid act. And the ſaid J. Doe thereupon appeared before us the ſaid commiſſioners, at the George Inn, in Burford aforeſaid, within the ſaid hundred of B. on the ſaid day of and at ſuch his appearance, we the ſaid commiſſioners then preſent, then and there cauſed to be read to the ſaid J. D. the rates, duties, and charges impoſed upon the ſaid hamlet or liberty of Holwell, within the ſaid hundred of B. by virtue of the ſaid act, and openly declared the effect of our charge to him, and how and in what manner he ſhould and ought to make his ſaid aſſeſſments, and how he ought to proceed in the execution of the ſaid act,

according to the true intent and meaning of the ſame, and after ſuch our charge given to the ſaid J. D. we the ſaid commiſſioners, on the ſaid day of at Burford aforeſaid, within the ſaid hundred of B. iſſued our warrant bearing date the day of in the year aforeſaid, and directed the ſame to the ſaid J. D. then being one of the moſt able and ſufficient inhabitants of the ſaid hamlet or liberty of H. within the ſaid hundred of B. and alſo to one other of the moſt able and ſufficient inhabitants of the ſaid hamlet or liberty of H. within the ſaid hundred of B. requiring them to be aſſeſſors of all and every the rates and ſums of money impoſed on the ſaid hamlet or liberty of H. within the ſaid hundred of B. by virtue of the ſaid act, and alſo therein appointed and prefixed the day of in the year aforeſaid, and the Bull Inn, at Burford aforeſaid, within the ſaid hundred of B. to be the day and place for him the ſaid J. D. and the ſaid aſſeſſors aforeſaid, to appear before us the ſaid commiſſioners, and to bring in their aſſeſſments of ſuch rates and ſums of money in writing; and we the ſaid commiſſioners being now duly met and aſſembled together, by virtue of the ſaid act, on this preſent ſaid day of * in the year aforeſaid, at the Bull Inn, at Burford aforeſaid,

ſaid, being the time and place appointed and prefixed, and by our ſaid warrant as aforeſaid, the ſaid J. D. being ſo as aforeſaid appointed aſſeſſor, makes default in his appearance, and neglects to appear before us here at the time ſo appointed by our ſaid warrant for his appearance as aforeſaid, not having lawful excuſe made out to us by the oaths of two credible witneſſes, according to the ſaid act. And thereupon, at this preſent meeting ſo holden by and before us the ſaid commiſſioners, on the day of in the year aforeſaid, at the Bull Inn, at Burford aforeſaid, within the ſaid hundred of B. R. R. of a credible witneſs, cometh before us the ſaid commiſſioners, and upon his oath on the holy goſpel of God to him duly adminiſtered by us, depoſeth and ſaith, that he the ſaid R. R. on the day of in the year aforeſaid, delivered our ſaid warrant to the ſaid J. D. By reaſon whereof, and by force of the ſaid act, the ſaid J. D. for his ſaid default hath forfeited and loſt to his majeſty ſuch ſum as we the ſaid commiſſioners now preſent ſhall think fit, not exceeding the ſum of 40*l.* to be levied as in and by the ſaid act is directed. Wherefore day is given by us the ſaid commiſſioners here preſent to the ſaid J. D. to appear before us the day of in the year aforeſaid,

at to ſhew cauſe, if any he hath, why he ſhould not be fined by us the ſaid commiſſioners or the major part of us, for his ſaid offence, in ſuch ſum, not exceeding the ſum of 40*l.* as we the ſaid commiſſioners, or the major part of us, ſhall think fit, according to the directions of the ſaid act. And now at this day, that is to ſay, on the day of in the year aforeſaid, at aforeſaid, being the time and place appointed for the ſaid J. D. to anſwer for his ſaid offence as aforeſaid, the ſaid J. D. having been duly ſummoned in this behalf, appears before us A. B. C. D. and E. F. we being now here met by virtue of the ſaid ſtatute, and the ſaid J. D. being now informed by us of the ſaid charge, and having heard the ſaid evidence of the ſaid R. R. admits that our ſaid warrant was delivered to him the ſaid J. D. by the ſaid R. R. as he the ſaid R. R. hath depoſed; and being aſked by us the ſaid commiſſioners here preſent, what he had to ſay why we the ſaid commiſſioners ſhould not fine him according to the directions of the ſaid act, does not make out to us, by the oaths of two credible witneſſes, any lawful reaſonable excuſe for not appearing before us, according to the tenor of our ſaid warrant. Whereupon it manifeſtly appears to us the ſaid commiſſioners here preſent, that the ſaid J. D. is guilty

Defendant appears to anſwer for his offence.

Is aſked what he has to ſay.

Does not make out any excuſe by proof.

Therefore they adjudge him guilty, and convict him.

of the ſaid offence. Therefore it is conſidered by us the ſaid commiſſioners here preſent, and we do think fit and adjudge, that the ſaid J. D. for his default, do forfeit and loſe to his majeſty the ſum of 5*l.* to be levied as by the ſaid act is directed, according to the form of the ſtatute in that caſe made and provided. In witneſs whereof, we the ſaid A. B. C. D. and E. F. commiſſioners as aforeſaid, have ſet our hands and ſeals to this record of the conviction aforeſaid, at B. aforeſaid, within the hundred of B. this day of in the year aforeſaid, &c. Forfeiture.

A gentleman then of great eminence at the bar, and a ſpecial Pleader, by whom the above was drawn, ſubjoined to it the following obſervations:—

" It is impoſſible to ſettle any form of " conviction which may do for all caſes; " but ſuppoſing all the facts to happen as " above ſtated, I think this will be the pro- " per form of conviction; for I would not " adviſe the commiſſioners to convict with- " out giving the defendant an opportunity of " proving his excuſe, if he has any. If the " defendant does not appear in purſuance of " the ſummons, the conviction muſt be al- " tered, and it ſhould be ſtated, that the per- " ſon who ſerved the ſummons was ſworn,

" and proved the ſervice; and the perſon who " ſerved the warrant ſhould in that caſe, or " in caſe the defendant appears, and does not " admit being ſerved with the warrant, be " again examined upon oath, and his evi- " dence ſet out again."

N. B. The above conviction, not being upon any *proſecution* under a penal ſtatute, but for the offence of diſobeying the Court itſelf who convicts, cannot (from its peculiar nature) require an information or complaint. But all the other ſteps are regularly and carefully ſtated; and the precedent may be very uſeful whenever (as may often happen) a ſimilar caſe occurs.

Warrant to levy the fine impoſed by the above conviction.

Hundred of Bampton, in the County of Oxford. } TO E. W. and G. H. Collectors, &c.

WHEREAS J. D. of the hamlet of H. within the hundred of B. in the county of Oxford, yeoman, at a meeting of us A. B. C. D. and E. F. named and appointed commiſſioners in an act of parliament made and paſſed in the 15th year of his majeſty's reign, intituled " An act for granting an aid to his " majeſty, by a Land Tax to be raiſed in " Great-Britain, for the ſervice of the year " 1775,"

"1775," for putting in execution the ſaid act, acting as ſuch commiſſioners in and for the hundred of B. in the county of Oxford, held on the day of in the 15th year of his majeſty's reign, at the George Inn, at Burford, within the ſaid hundred of B. is duly convicted by us the ſaid commiſſioners, for that we the ſaid commiſſioners iſſued out our warrant bearing date the day of in the year aforeſaid, and directed the ſame to the ſaid J. D. then one of the moſt able and ſufficient inhabitants of the ſaid hamlet or liberty of H. in the ſaid hundred of B. requiring him to be one of the aſſeſſors of all and every the rates and ſums impoſed on the ſaid hamlet or liberty of H. within the ſaid hundred of B. by virtue of the ſaid act, and alſo appointing and prefixing the day of in the year aforeſaid, and the Bull Inn, at Burford aforeſaid, within the ſaid hundred of B. to be the day and place for him the ſaid J. D. aſſeſſor as aforeſaid, to appear before us the ſaid commiſſioners, and to bring in his aſſeſſments of ſuch rates and ſums of money in writing. Yet the ſaid J. D. made default in his appearance, and neglected to appear before us at the time ſo appointed for his appearance by our aforeſaid warrant, not having lawful excuſe made out by the oath of two credible witneſſes, according to the ſaid act,

act, by reaſon whereof, and by force of the ſaid act, the ſaid J. D. for his ſaid default, forfeited and loſt to his majeſty ſuch ſum as we the ſaid commmiſſioners preſent at the ſaid meeting, or the major part of us, ſhould think fit, not exceeding the ſum of 40*l.* to be levied as in and by the ſaid act is directed. Whereupon we the ſaid commiſſioners preſent at that meeting aforeſaid, thought fit and adjudged, that the ſaid J. D. for his ſaid default, ſhould forfeit and loſe to his majeſty the ſum of 5*l.* to be levied as by the ſaid act is directed, as by the record of the ſaid conviction under our hands and ſeals (relation being thereunto had) more fully appears. Theſe are therefore in his majeſty's name to authorize and require you the ſaid collectors, or either of you, to demand the ſaid ſum of 5*l.* of the ſaid J. D. if he can be found, or elſe to demand the ſame at the laſt place of abode of him the ſaid J. D. and in caſe he ſhall not pay the ſame upon demand, there to levy the ſaid 5*l.* upon the goods and chattels of the ſaid J. D. by diſtreſs and ſale thereof; and the ſaid goods and chattels ſo taken by diſtreſs, to keep by the ſpace of four days, at the coſt and charges of the ſaid J. D.; and if the ſaid J. D. do not pay the ſum of 5*l.* the money ſo diſtrained for, within the ſaid ſpace of four days, that you then cauſe the ſaid diſtreſs to

be

be appraiſed by two or more of the inhabitants where the ſame ſhall be taken, or other ſufficient perſons, and to be ſold for the payment of the ſaid 5*l.*; and the overplus coming by ſuch ſale (if any be) over and above the ſaid 5*l.* and the charges of taking, keeping, and ſelling the ſaid diſtreſs, you return to the ſaid J. D. and that out of the money ariſing from ſuch diſtreſs and ſale of the goods and chattels of the ſaid J. D. you do pay the ſaid 5*l.* to his majeſty's receiver-general of the land tax for the county of Oxford, or to his lawful deputy, for the uſe of his majeſty, as the ſaid act directs, and certify to us what you ſhall have done in the premiſes, at on the day of next, as you ſhall anſwer the contrary at your perils. Given under our hands and ſeals the day of in the year aforeſaid.

(Drawn by the ſame Gentleman as the Conviction.)

Lottery.

Againſt a mountebank doctor for expoſing plate to ſale by a lottery, contrary to 12 G. II. c. 28.

WILTS, (to wit) Be it remembered that on the day of in the year of the reign of our preſent ſovereign lord George the Third, by the grace of God &c. at in the county of Wilts aforeſaid, P. Eyles of in the county aforeſaid, maſon, in his own proper

proper perſon, as well for the poor of the pariſh of aforeſaid, in the county aforeſaid, where the offence hereinafter mentioned was committed, as for himſelf, exhibited unto me J. M. eſq. one of the juſtices of our ſaid preſent ſovereign lord the king aſſigned to keep the peace, &c. in and for the ſaid county, and alſo to hear and determine, &c. within the ſaid county, a complaint and information, and thereby informeth me the ſaid juſtice, that J. Lang of aforeſaid, in the county aforeſaid, practitioner in phyſick, did, after the 24th day of June, 1739, to wit, on the day of laſt paſt, at aforeſaid, in the county aforeſaid, *expoſe to ſale plate, to wit, a ſilver bowl and ſix ſilver ſpoons, by a method depending upon and to be determined by a lot or drawing by a device of chance*, againſt the form of the ſtatute, &c. whereby the ſaid J. L. hath forfeited the ſum of 200l. of lawful money, &c. And thereupon the ſaid P. E. prays judgment in the premiſes, and that he may have one third of the forfeiture, according to the form of the ſtatute, and that the ſaid J. Lang may be ſummoned to anſwer the ſaid premiſes, and to make defence therein before me the ſaid juſtice. And afterwards, to wit, on the day of aforeſaid, in the ſaid year of the reign, &c. at aforeſaid,

Information.

aforeſaid, in the county aforeſaid, being the time and place appointed by my ſummons on the above written information, the ſaid J. Lang being ſummoned appeareth, and pleadeth that he is not guilty of the offence, in manner and form as in the above written information is mentioned and ſet forth. Nevertheleſs, on the ſaid 7 day of aforeſaid, in the year aforeſaid, at aforeſaid, in the county aforeſaid, one credible witneſs, to wit, A. B. of in the county aforeſaid, ſpinſter, cometh before me the ſaid juſtice, and before me the ſame juſtice, upon her oath by me the ſame juſtice then and there adminiſtered, in the preſence of the ſaid J. Lang, depoſeth, ſweareth, and ſaith, that on the ſaid day of laſt paſt, at aforeſaid, in the county aforeſaid, the ſaid J. Lang did exhibit and expoſe to ſale on a ſtage ſet and placed there by the order of him the ſaid J. L. a ſilver bowl and ſix ſilver ſpoons, as prizes, by a method depending upon and to be determined by a lot or drawing, by a device of chance, and thereby obtained a conſiderable ſum of money, in the manner following, *i. e.* that he the ſaid J. Lang did, on the ſaid day of laſt, at aforeſaid, in the county aforeſaid, in an open and publick manner, on the ſaid

Defendant in conſequence of ſummons appears, and pleads not guilty.

Evidence.

Deſcription of the Mountebank's Lottery.

ſaid ſtage ſo erected and placed as aforeſaid, receive and take of and from ſeveral perſons, to wit, one hundred perſons, then and there aſſembled, one ſhilling each, together with a mark, to wit, ſome a handkerchief, others an apron, and others a glove, all which ſaid marks were taken or placed by the ſaid J. L. or his ſervants, in a heap or parcel together upon the ſaid ſtage, and when no more money or marks were thrown up to the ſaid J. L. upon the ſaid ſtage, he the ſaid J. L. or his ſervants, took out of a heap or parcel of packets and papers containing ſalve and powders, then and there lying on the ſaid ſtage, as many of the ſame packets or papers of ſalve and powders as there were prizes intended to be delivered out, to wit, three prizes, *i. e.* a ſilver bowl, three ſilver ſpoons, and three ſilver ſpoons, then opened the ſame, and put into each of them another paper containing powder, on which was placed, written, or appointed certain ſeals, letters, or marks, denoting it to be a prize, and what ſuch prize conſiſted of, and that whoever had the lot, good fortune, or chance to receive ſuch packet and paper of ſalve and powders would be intitled to ſuch prize, then cloſed up the ſaid packets or papers of ſalve and powder ſo opened for the purpoſe aforeſaid, and put them to the other packets or papers of ſalve and powders in the heap on the ſaid ſtage, which

contained

contained no prizes, and mixed them all together, making the number of packets or papers of ſalve and powder equal to the number of marks that were thrown up, and ſhillings that were received, and then called two boys from among the crowd, and employed the ſaid two boys to take up a packet or paper of ſalve and powders out of the heap on the ſaid ſtage, which was delivered to the ſaid J. L. or his ſervants, who then and there took up one of the ſaid marks, proclamation then being made for the owner thereof to claim the ſame, to whom was delivered the mark, together with one of the ſaid packets or papers of ſalve and powder ſo drawn and taken up by the ſaid boys as aforeſaid. And the ſaid J. Lang proceeded in the ſame manner until the ſaid boys had drawn up all the ſaid packets or papers of ſalve and powder, and the ſaid J. L. and his ſervants had delivered out all the ſaid marks, together with the ſaid packets or papers of ſalve and powder, as well thoſe containing the ſeals, letters, or marks denoting them to be prizes as aforeſaid, as others ſo drawn from the heap on the ſaid ſtage by the ſaid boys as aforeſaid, after which the fortunate perſons to whoſe lot the ſaid packets or papers of ſalve and powder fell, which contained the papers of powder whereon was placed, written, or printed, the ſaid ſeals, letters, or marks as aforeſaid, attended at or

on

on the ſaid ſtage, and had their reſpective prizes delivered to them by the ſaid J. L. or his ſervant or ſervants. And thereupon the ſaid J. L. not having ſhown any ſufficient cauſe to the contrary thereof, by me the ſaid juſtice, then and there called upon for that purpoſe, the day of aforeſaid, at aforeſaid, in the ſaid county, is convicted by me the ſaid juſtice, of expoſing to ſale plate, *i. e.* a ſilver bowl, and ſix ſilver ſpoons, by a method depending upon and to be determined by a lot or drawing, by a device of chance, againſt the form of the ſtatute, &c. and for his offence aforeſaid hath forfeited the ſum of 200l. to be diſtributed as the ſtatute aforeſaid doth direct. In witneſs whereof I the ſaid juſtice to this preſent record of conviction have ſet my hand and ſeal at aforeſaid in the county aforeſaid, the day of in the year of our Lord 1771.

End of the evidence.

Judgment.

T. M. (L. S.)

Judqment of the quarter ſeſſions on appeal from the above conviction confirming it.

WILTS, to wit, Be it remembered that at the general quarter ſeſſions of the peace of our lord the king, held at M. in and for the ſaid county of W. on the day of in the 11th year of the reign of our ſovereign Lord George the Third, by the grace, &c.

before Sir E. B. bart. W. S. G. W. A. A. Eſquires, and others their fellows, juſtices of our ſaid lord the king aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine, &c. It is ordered as follows. i. e.

Upon hearing the appeal of J. Lang. of in the county aforeſaid, practitioner in phyſick, from a conviction and judgment (on the information and proſecution of P. Eyles, of in the county aforeſaid, maſon) bearing date the day of laſt, and made by and under the hand and ſeal of J. M. eſq. one of the juſtices of our ſaid preſent ſovereign lord, &c. aſſigned, &c. and alſo, &c. whereby the ſaid J. L. is convicted by him the ſaid juſtice, for expoſing to ſale a ſilver bowl and ſix ſilver ſpoons, by a method depending upon and to be determined by a lot or drawing by a device of chance, againſt the form of the ſtatute, &c. and for his offence aforeſaid hath forfeited the ſum of 200l. to be diſtributed as the ſtatute aforeſaid doth direct. And upon hearing counſel both for the ſaid appellant J. L. and the ſaid proſecutor and informant P. E. this court doth affirm the ſaid conviction and judgment, and this court doth order the ſaid appellant J. L. on ſight hereof, to pay unto the ſaid proſecutor P. E. the ſum

of for his treble coſts, agreeably to the directions of the ſtatute aforeſaid.

By the Court.

Affirmed in B. R. Hil. 12 G. 3.

N. B. The conviction was drawn by a gentleman of eminence at the bar, and no objection (it is ſaid) was made to the *form* of it; but the queſtion agitated was, whether the facts ſtated, conſtituted an offence within the ſtatute.

Manufactures.

Conviction on 22 G. 2. c. 27. (intituled An Act for preventing frauds and abuſes by perſons employed in the manufactures of hats, &c.) Vid. alſo 17 G. 3. c. 56.

BE it remembered, that on the 28th day of July, in the 23d year of the reign of our ſovereign lord George the Second by the grace of God, &c. in the year of our Lord 1749, before me W. H. eſquire, then and ſtill being one of the juſtices aſſigned to keep the peace of our lord the now king in and for the county of S. and alſo to hear and determine divers felonies and other offences committed within the ſame county, came M. H. of B. in the pariſh of O. in the ſaid county of S. felt-maker, and made information before me the ſaid juſtice, at my houſe, ſituate within the pariſh of S. in the ſaid county of S. that he the ſaid M. H. on the firſt day of May, in the 22d year of the reign of our ſaid lord the now king, was, and from thenceforth hitherto hath been, a maſter hatter, and that he ſo being a hatter,

Information.

hatter, he the ſaid M. H. within the time aforeſaid, and after the 24th day of June, 1749, to wit, on the 3d day of July, 1749, and at divers other days and times between the ſaid 24th day of June and the ſaid 3d day of July, at the pariſh of O. aforeſaid, in the ſaid county of S. hired and employed one J. H. of the ſaid pariſh and county, hatter, in the way of his trade, as journeyman hatter, to make certain hats for the ſaid M. H. and then and there delivered to the ſaid J. H. ſeveral parcels of fur, to wit, beaver, coney wool, and goat's hair, for the making of the ſaid hats therewith, and entruſted him therewith for the purpoſe aforeſaid, the ſame being then and there materials fit and proper for that purpoſe, to be uſed, employed, and manufactured in the making of the ſaid hats; and that the ſaid J. H. after that the ſaid ſeveral parcels of fur, to wit, beaver, coney wool, and goat's hair, had been ſo delivered to the ſaid J. H. for the purpoſe aforeſaid, and after that the ſaid J. H. had been ſo intruſted therewith as aforeſaid, and before that the ſame was or were manufactured or made into hats, and after the ſaid 24th day of June, 1749, he, the ſaid J. H. ſo being a journeyman hatter as aforeſaid, and ſo being then hired and employed by the ſaid M. H. as aforeſaid, to make hats for him the ſaid M. H. of the ſaid materials, at the ſaid pariſh of O. in the county aforeſaid, unlawfully purloined and embezzled a great part of the ſaid materials

That J. H. a journeyman hatter, purloined the materials that had been entruſted to him.

rials with which he the ſaid H. was ſo intruſted as aforeſaid, for the purpoſe aforeſaid, that is to ſay, three quarters of an ounce weight of the ſaid fur, called Ruſſian beaver, and two ounces weight of the ſaid coney wool, againſt the form of the ſtatute in that caſe made and provided. And that Ann Edwards, reſiding in the pariſh of St. T. in the county aforeſaid (the wife of S. E. of the ſaid laſt mentioned pariſh and county, felt-maker) afterwards, to wit, on the ſame 4th day of July, 1749, at the pariſh aforeſaid, in the county aforeſaid, unlawfully bought, received, accepted, and took by way of ſale, of and from S. H. then and ſtill the wife of the ſaid J. H. the ſaid three quarters of an ounce weight of the ſaid fur called Ruſſian beaver, and two ounces weight of the ſaid coney wool, being part of the ſaid materials with which the ſaid J. H. had been ſo entruſted by the ſaid M. H. to be uſed and employed in and about the making of the ſaid hats for the ſaid M. H. and ſo purloined and embezzled by the ſaid J. H. as aforeſaid, ſhe, the ſaid A. E. at the time ſhe bought, received, accepted, and took by way of ſale the ſaid three quarters of an ounce weight of Ruſſian beaver, and two ounces of coney wool as aforeſaid, of and from the ſaid S. H. wife of the ſaid J. H. then and there well knowing the ſaid three quarters of an ounce weight of Ruſſian beaver, and two ounces weight of coney wool, to have been ſo purloined

That A. E. bought the ſaid purloined materials.

purloined and embezzled by the ſaid J. H. as aforeſaid; and the ſaid A. E. at any time before, or at the time ſhe bought, received, accepted, and took by way of ſale the ſaid three quarters of an ounce weight of Ruſſian beaver, and two ounces of coney wool, not having obtained the conſent of the ſaid M. H. for that purpoſe, againſt the form of the ſtatute in ſuch caſe made and provided: By reaſon whereof, and by force of the ſtatute in ſuch caſe made and provided, the ſaid A. E. hath forfeited the ſum of 20*l.* And thereupon afterwards, that is to ſay, on the ſaid 28th day of July, 1749, before me the ſaid juſtice, at my ſaid houſe, ſituate in the ſaid pariſh of St. T. aforeſaid, in the county aforeſaid, came as well the ſaid M. H. as the ſaid A. E. the ſaid A. E. having been duly ſummoned to appear before me at the time and place laſt aforeſaid, to ſhew cauſe why ſhe ſhould not be convicted of the ſaid offence charged upon her in and by the ſaid information; and the ſaid M. H. prays, that the ſaid A. E. may be convicted of the ſaid offence. And thereupon the ſaid J. H. and S. H. alſo at the ſame time perſonally preſent before me the ſaid juſtice, and being duly and ſeverally by me the ſaid juſtice ſworn upon the holy goſpel of God to give true evidence of and concerning the premiſes aforeſaid contained in the ſaid information (I the ſaid juſtice having full power and authority to adminiſter the ſaid oath ſeverally

Defendant's appearance in conſequence of ſummons.

Evidence.

to the ſaid J. H. and S. his wife, in this behalf) they the ſaid J. H. and S. his wife, being credible witneſſes, and each of them being a credible witneſs in this behalf, and the ſaid J. H. and S. H. being ſo ſeverally ſworn as aforeſaid before me, ſeverally on their ſeveral oaths depoſe and ſwear, and ſay as follows, to wit, he the ſaid J. H. for himſelf depoſeth, ſweareth, and ſaith, that, [*here ſtate the fact of the embezzlement, as in the information, and that he gave it to his wife to ſell for him*] and the ſaid S. H. for herſelf depoſeth, ſweareth, and ſaith, [*here ſtate the fact of the wife having received the fur from her huſband, and her having ſold it to the defendant, together with all the circumſtances that tend to ſhew that the defendant knew it to be embezzled*]. And the ſaid A. E. being ſo perſonally preſent before me the ſaid juſtice, and having heard the ſaid information, and the matter therein alledged, and the ſaid evidence of the ſaid J. H. and S. his wife, ſo given by them reſpectively before me the ſaid juſtice as aforeſaid, and having fully underſtood the ſame, and being by me aſked, if ſhe has or knows any thing to ſay for herſelf why ſhe ſhould not be convicted of the ſaid offence charged againſt her in and by the ſaid information; and all and every the matters and things by her the ſaid A. E. alledged in her defence, of and concerning the premiſes, being fully heard and underſtood by me the ſaid juſtice. Now

I the ſaid juſtice do adjudge and conſider, upon the ſaid evidence of the ſaid J. H. and S. his wife, being credible witneſſes, and each of them being a credible witneſs in this behalf, that the ſaid A. E. is guilty of the ſaid offence charged upon her in and by the information aforeſaid, and do accordingly convict her of the ſaid offence, and do adjudge that the ſaid A. E. do for her ſaid offence forfeit the ſum of 20*l.* according to the form and effect of the ſaid ſtatute; and I do hereby adjudge, that out of the ſaid ſum of 20*l.* ſo forfeited as aforeſaid, 3*s.* part thereof, be paid to the ſaid M. H. as and for a ſatisfaction for the ſaid Ruſſian beaver and coney wool ſo purloined and taken by way of ſale as aforeſaid, he the ſaid M. H. being the party injured thereby; and that 7*l.* 14*s.* 10*d.* part of the ſaid 20*l.* ſo forfeited as aforeſaid, be paid to the ſaid M. H. for the coſts of the aforeſaid proſecution of the ſaid A. E. in this behalf; and that 12*l.* 2*s.* 2*d.* reſidue of the ſaid 20*l.* ſo forfeited as aforeſaid, be equally diſtributed amongſt the poor of the pariſh of St. S. aforeſaid, in the ſaid county of S. the ſaid laſt-mentioned pariſh being the pariſh where the ſaid A. E. at the time of her committing the aforeſaid offence, reſided and inhabited, and ſtill reſides and inhabits, according to the form of the ſtatute in ſuch caſe made and provided. In witneſs whereof I have here-

Judgment.

Diſtribution of the penalty.

unto ſet my hand and ſeal this 28th day of July, in the 23d year of the reign of our ſovereign lord George the Second, by the grace of God, &c. and in the year of our Lord 1749.

Manufactures. Wages.

Conviction before two juſtices for giving leſs than the regular wages to a journeyman weaver, on 13 G. III. c. 68.

Liberty of the Tower of London, } BE it remembered, that on the 1ſt day of December, in the the 16th year of the reign of our lord the now king, before us D. Wilmot, eſq; and J. Marſhall, eſq; two of the juſtices of our ſaid lord the king aſſigned to keep the peace of our ſaid lord the king in the liberty of the tower of London, and alſo to hear and determine, &c. within the ſame liberty, appeared J. Baker, of the hamlet of Mile End New Town, in the county of Middleſex, weaver, and John Timmings, of the precinct of the old Artillery Ground, within the liberty of the tower of London, weaver; and the ſaid

Information. J. B. giveth us the ſaid juſtices to underſtand and be informed, that after the making of a certain act of parliament made in the 13th year of the reign of his preſent majeſty, intituled "An act to empower the magiſ- "trates therein-mentioned to ſettle and re- "gulate the wages of perſons employed in "the

"the ſilk manufacture within their reſpective "juriſdictions;" and after the 1ſt day of July, 1773, therein-mentioned, and before the 1ſt day of December, in the year of our Lord 1775 aforeſaid, the juſtices of the peace for the liberty of the tower of London, at the general quarter ſeſſions of the peace holden by adjournment on the 6th day of September, in the 13th year of the reign of his preſent majeſty, at the Court-houſe in Wellcloſe-ſquare, in and for the ſame liberty, upon application made to them for the purpoſe of ſettling, regulating, ordering, and declaring the wages and prices of the work of journeymen weavers working within their juriſdiction in the ſaid manufacture; and amongſt other things did thereby ſettle, order, and declare the price of the work of journeymen weavers in the ſaid manufacture, for making and manufacturing of plain *yard wide* four-thread alamodes of one thouſand eight hundred counts or leſs, at the ſum of 1*s.* 2*d.* for the ell, and that after ſuch order was made as aforeſaid, the ſame was printed and publiſhed, at the requeſt of the perſons who applied for the ſame, three times, in two daily newſpapers publiſhed in London and Middleſex. And the ſaid John Baker further giveth us the ſaid juſtices to underſtand and be informed, that after the making and publiſhing the ſaid order, to wit, on the 7th

day

day of November, in the year of our Lord 1775, the ſaid J. Timmings was, and from thence hitherto hath been and ſtill is a maſter weaver in the ſilk manufacture, in the precinct of the old Artillery Ground, in the liberty aforeſaid; and that one John Arnold was alſo on the ſame day and year laſt aforeſaid, and continually from thence hitherto hath been and ſtill is a journeyman weaver in the ſilk manufacture, at the precinct aforeſaid, within the liberty aforeſaid, and there employed as the journeyman to the ſaid J. Timmings, to work for him in the ſilk manufacture aforeſaid, and *particularly in working a certain piece of ſilk, called plain yard wide four-thread alamode,* containining therein thirty-one ells of wrought ſilk of one thouſand eight hundred counts or leſs, part of the works the prices whereof were ſo ſettled and publiſhed as aforeſaid. And the ſaid John Baker giveth us the ſaid juſtices further to underſtand and be informed, that the ſaid John Arnold being ſo employed by the ſaid John Timmings as aforeſaid, did make the ſaid laſt-mentioned work for him the ſaid J. T. containing therein the ſaid thirty-one ells of wrought ſilk of one thouſand eight hundred counts or leſs as aforeſaid; and that upon the 1ſt day of December, in the year laſt aforeſaid, at the precinct aforeſaid, the ſaid J. T. did pay to the ſaid J. A. for ſuch work, the ſum of 9*d.* an ell for ſuch ell thereof, and

no

no more, and that ſuch price ſo paid was leſs by 5*d.* per ell than the price ſo ſettled, allowed, and publiſhed as aforeſaid. And the ſaid J. T. being preſent here before us the ſaid juſtices, in order to make his defence to the aforeſaid complaint and information, and having heard the ſame, he the ſaid J. T. is aſked by us the ſaid juſtices, if he can ſay any thing for himſelf why he the ſaid J. T. ſhould not be convicted of the premiſes above charged upon him in form aforeſaid; who pleadeth, that he is not guilty of the above offence. Nevertheleſs on the ſame day and year aforeſaid, at the precinct aforeſaid, it duly appears to us the ſaid juſtices, that the price of the work of journeymen weavers in the ſilk manufacture, within the liberty of the tower of London, was ſettled and regulated by the juſtices of the peace for the ſaid liberty, at the general quarter ſeſſions of the peace holden by adjournment, on the 6th day of September, in the 13th year of the reign of his preſent majeſty, at the Court-houſe, in Well-cloſe-ſquare, in and for the ſame liberty, upon application made to them for the purpoſe of ſettling, regulating, ordering, and declaring the wages and prices of the work of journeymen weavers working within their juriſdiction; and that the ſaid juſtices, in their ſeſſions aforeſaid, did ſettle, order, and declare the price of the work of ſuch journeymen weavers for making

Defendant being preſent is aſked, &c.

Plea, not guilty.

Nevertheleſs it appears that the price was ſo ſettled.

and

and manufacturing of *plain yard wide four-thread alamode* of one thouſand eight hundred counts or leſs, at 1*s.* 2*d.* by the ell, and that the ſaid order was three times publiſhed in two daily newſpapers publiſhed in London and Middleſex, to wit, in a certain paper, called the Publick Ledger, on the 16th, 17th, and 18th days of September, in the 13th year of the reign of our lord the now king, and in a certain other paper, called the Gazetteer, &c. (as before) the ſaid two papers, called the Publick Ledger, and Gazetteer and New Daily Advertiſer, then being daily newſpapers publiſhed in London and Middleſex. And John Arnold, a credible witneſs in this behalf, comes before us the ſaid juſtices now here, and in the preſence and hearing of the ſaid J. T. (he the ſaid J. A. being firſt duly ſworn by us the ſaid juſtices to ſpeak the truth concerning the premiſes aforeſaid) upon oath depoſeth and ſaith, that the ſaid J. T. on the ſaid 7th day of November, in the year of our Lord 1775 aforeſaid, was and from thence hitherto and ſtill is a maſter weaver in the ſilk manufacture, at the precinct aforeſaid, within the liberty aforeſaid, and that he the ſaid John Arnold was then and there alſo, and from thence hitherto hath been and ſtill is a journeyman weaver in the ſilk manufacture, and on the 7th day of November, in the year laſt aforeſaid, at the precinct aforeſaid, within the liberty

Evidence of the fact.

liberty aforeſaid, was employed by and did work for the ſaid J. T. as his journeyman, in the ſilk manufacture, in the making of a certain piece of ſilk, *called plain yard wide four-thread alamode*, containing therein thirty-one counts or leſs, and that ſuch work was part of the works, the price whereof was ſo ſettled by the juſtices at their general quarter ſeſſions aforeſaid; and that the ſaid J. Timmings afterwards, to wit, on the 17th day of November, in the year laſt aforeſaid, at the precinct aforeſaid, and in the liberty aforeſaid, did pay to the ſaid J. A. the ſum of 9*d.* per ell for each ell thereof, and no more. And hereupon the ſaid J. T. is now by us the ſaid juſtices aſked what he hath to ſay why he ſhould not be convicted by us of and for the ſaid offence; but the ſaid J. T. doth not produce to or before us any evidence on his behalf to ſhew and prove that he is not guilty of the offence aforeſaid, nor doth he ſhew or alledge any reaſon why he ſhould not be convicted thereof. Therefore the ſaid J. T. on the ſaid 1ſt day of December, in the year laſt aforeſaid, by and before us the juſtices aforeſaid, according to the form of the ſtatute aforeſaid, is convicted of the aforeſaid offence; and we do adjudge, that for ſuch offence the ſaid J. T. hath forfeited the ſum of 50*l.* of lawful money of G. B. to be diſpoſed of as the ſtatute aforeſaid doth direct.——In witneſs whereof we the ſaid juſtices to this preſent record of

Defendant called upon for his defence, but does not produce any evidence.

Judgment.

Forfeiture.

of the conviction aforeſaid have ſet our hands and ſeals the day and year firſt above written.

N. B. This conviction was quaſhed (Eaſt. 16 G. III.) becauſe it did not ſtate that the ſilk *was* yard wide, but only that it was *called* ſo *.

Smuggling. †

Conviction before ſix juſtices of the peace upon the ſtat. 11th G. I. c. 30. ſ. 16. for harbouring run tea. Information by collector of exciſe.

WILTS, to wit. Be it remembered, that on the 22d day of December, in the 13th year of the reign of our ſovereign lord George the Third, by the grace of God, &c. at Chippenham, in the county of Wilts, John Kiddle, one of his majeſty's collectors of exciſe, in his proper perſon, cometh before us A. B. C. D. &c. (naming them) ſix of the juſtices of our ſaid lord the king aſſigned to keep

* I do not find there was any other objection. The precedent may therefore be uſeful, taking care to avoid that fault; as to which the Court ſeem to have been more ſtrict than they have been of late years; for it is not, perhaps, eaſy to diſtinguiſh the objection here from that which was overruled in R. v. Hartley (Treatiſe, p. 97.) viz. that the dog was not ſaid to *be* a greyhound, but to be *called* ſo.

† The ſummary juriſdiction of the juſtices in thoſe caſes is by 12 Car. II. c. 23. & 24. The penalties and mode of recovering them are given by 11 G. I. ut ſupra. The information muſt be laid within three months. The manner of ſummons is by 32 G. II. c. 17. Since the late Acts that make it neceſſary to have a licence to deal in tea,

keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, and as well for our lord the king as for himſelf, in this behalf, giveth us the ſaid juſtices to underſtand and be informed, that G. B. late of Corſham, in the ſaid county of Wilts, alehouſe-keeper, within the ſpace of three months now laſt paſt, to wit, on the 14th day of December, in the 13th year of the reign of our ſaid lord the now king, at C. aforeſaid, in the ſaid county of W. did knowingly harbour, keep, and conceal certain run goods, wares, and merchandizes, to wit, four hundred and thirty-five pounds weight of run tea, and two hundred and fourteen pounds weight of run raw coffee, of the value of 120*l.* liable to the duties of exciſe, and contrary to the form of the ſtatute in that caſe made and provided, whereby, and by force of the ſtatute in that caſe made and provided, the ſaid G. B. had for his ſaid offence forfeited the ſum of 360*l.* being treble the value of the ſaid tea and coffee ſo harboured, kept, and concealed as aforeſaid, one moiety thereof to our ſaid lord the king, and the other to the ſaid informant,

tea, proſecutions under this ſtatute may be leſs neceſſary; but the precedents under this head may ſtill be uſeful; eſpecially as two out of three of them are caſes where the defendant did not appear, and conſequently the ſummons is ſtated at large.

and

and prays that the ſaid G. B. may be convicted of the ſaid offence, according to the ſtatute in that caſe made and provided. And afterwards, on the 2d day of January, in the 13th year of the reign of our ſaid lord the now king, at C. aforeſaid, the ſaid G. B. having been previouſly ſummoned, in purſuance of our ſummons iſſued for that purpoſe, to appear before us the ſaid juſtices, &c. at this time, to anſwer the matter of complaint contained in the ſaid information, which is now duly proved before us upon the oath of And the ſaid G. B. neglecting to appear here before us in conſequence of our ſaid ſummons, and not making any defence to the ſaid charge contained in the ſaid information, we the ſaid A. B. &c. (naming the juſtices) ſo being juſtices as aforeſaid, do now proceed to examine into the truth of the ſaid complaint contained in the ſaid information. And one a credible witneſs in this behalf, now here appearing before us, ſo being ſuch juſtices as aforeſaid, as a witneſs, to prove the ſaid charge contained in the ſaid information againſt the ſaid G. B. is now here by us the ſaid juſtices duly ſworn, and does before us the ſaid juſtices take his corporal oath upon the holy goſpel of God to ſpeak the truth, the whole truth, and nothing but the truth, of and upon the matters contained in the ſaid information, we having adminiſtered, and having competent power to adminiſter

Defendant ſummoned.

Proof of ſummons being ſerved. Defendant neglects to appear.

Evidence of the offence.

adminiſter ſuch oath to him in that behalf. And the ſaid being ſo ſworn, doth on his ſaid oath ſay and depoſe, that the ſaid G. B. within three months now laſt paſt, to wit, on the 14th day of December, in the 13th year of the reign of our lord the now king, at C. aforeſaid, in the ſaid county, did knowingly harbour, keep, and conceal certain run goods, wares, and merchandizes, to wit, four hundred and thirty-five pounds weight of run tea, and two hundred and fourteen pounds weight of run raw coffee, of the value of 120*l.* being liable to the duties of exciſe, contrary to the form of the ſaid ſtatute in that caſe made and provided. Wherefore it manifeſtly appears to us the ſaid juſtices, that the ſaid G. B. is guilty of the premiſes charged upon him in the ſaid information. It is therefore conſidered and adjudged by us the ſaid juſtices, that the ſaid G. B. be convicted, and he is accordingly by us convicted of the offence charged upon him in and by the ſaid information. And we do hereby adjudge, that the ſaid G. B. for his offence aforeſaid, hath forfeited the ſum of 363*l.* of lawful money of Great-Britain, one moiety thereof to our ſaid lord the king, and the other moiety thereof to the ſaid J. K. the ſaid informer: But we do mitigate the ſame to the ſum of 120*l.* and adjudge and order that the ſaid G. B. do forthwith pay the ſaid ſum of 120*l.* to our ſaid lord the king, and the ſaid J. K. according

Judgment.

Forfeiture.

Mitigation.

to the form of the ſtatute in that caſe made and provided.—In witneſs whereof we the ſaid juſtices to this preſent conviction have ſet our hands and ſeals, at C. aforeſaid, in the county aforeſaid, the day of in the 13th year of the reign of our ſaid lord the king, and in the year of our Lord 1773.

(Signed by Mr. Wood.)

Conviction on the 10th Geo. I. c. 10. ſ. 16. for knowingly harbouring and concealing ſmuggled tea.

MIDDLESEX, to wit. Be it remembered, that on the 28th day of November, in the year of our Lord 1777, and in the 18th year of the reign of our ſovereign lord George the Third, at the Rotation Office in Litchfield Street, in the pariſh of St. Anne, in the county of M. Robert Allen, as well for his ſaid majeſty as for himſelf, cometh in his proper perſon before us John Machin and John Croft, eſqrs. two of the juſtices of our ſaid lord the king, aſſigned to keep the peace, &c. in and for the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors, in the ſaid county committed, reſiding near the place where the ſeizure hereinafter mentioned was made, and giveth us the ſaid juſtices to underſtand and be informed that William Price, being one of his majeſty's officers of exciſe and for the inland duties upon tea, payable to his ſaid majeſty by the ſtatutes in that caſe made and provided, on the 10th day of

Information, ſtating ſeizure by an exciſe officer.

November,

November, in this preſent month of
at Ealing, in the ſaid county of M. did ſeize and arreſt to the uſe of his ſaid majeſty, as forfeited, 150lb. weight of tea, together with the packages containing the ſame, and alſo two horſes made uſe of in carrying and removing the ſaid tea from one part of this kingdom to another, for that the ſaid tea being liable and chargeable with the inland duties and other duties to his ſaid majeſty, was, after the 24th day of June, 1724, clandeſtinely run and unlawfully imported from foreign parts to Ealing aforeſaid, in the ſaid county of M. without his ſaid majeſty's duties payable for the ſame having been paid or ſecured as they ought to have been, and without due entry having been made thereof at his ſaid majeſty's Cuſtom-houſe, according to the form of the ſtatute in that caſe made and provided, and without the ſame having been brought into any warehouſe or warehouſes, for that purpoſe provided at the charge of the importer or importers thereof, and approved of by the commiſſioners of his ſaid majeſty's cuſtoms, or the major part of them for the time being, as by the ſtatute in that caſe made and provided is directed, contrary to the form of the ſaid ſtatute; whereby the ſaid tea, and the packages containing the ſame, became forfeited. And for that the ſaid two horſes, at the time of the ſaid ſeizure at E. aforeſaid, were made uſe of and uſing

in carrying the ſaid tea, ſo clandeſtinely run and unlawfully imported as aforeſaid, from one part of this kingdom to another, contrary to the form of the ſaid ſtatute, whereby the ſaid two horſes became forfeited. And the ſaid R. A. further giveth us the ſaid juſtices to underſtand and be informed, that Michael Cox, on the ſaid 10th day of this preſent month of November, at Ealing aforeſaid, at the time of the ſaid ſeizure, did knowingly harbour, keep and conceal the ſaid tea, ſo clandeſtinely run and unlawfully imported as aforeſaid, contrary to the form of the ſtatute in ſuch caſe made and provided; whereby the ſaid M. C. hath forfeited the ſum of 238*l.* 10*s.* of lawful money of G. B. being treble the value of the ſaid tea ſo harboured, kept, and concealed: And thereupon the ſaid R. A. who proſecuteth as aforeſaid, humbly prays the judgment of us the ſaid juſtices in the premiſes, according to the form of the ſtatutes in ſuch caſe made and provided, and that the ſaid M. C. may be ſummoned to make defence thereto, before us the ſaid juſtices. Whereupon, on the ſaid 28th day of November, in the ſaid year of our Lord 1777, at the ſaid Rotation Office in Litchfield Street aforeſaid, in the ſaid county of M. We the ſaid juſtices do iſſue our ſummons under our hands, directed to the ſaid M. C. thereby notifying to him the ſaid information and complaint, requiring

Defendant's concern in the tranſaction.

Forfeitures.

Summons.

quiring the ſaid M. C. to be and appear before us, on the 3d day of December next*, *at of the clock in the forenoon* of the ſame day, at the Office of Rotation in Litchfield Street aforeſaid, in the ſaid county, to make his defence in and to the matters contained in the ſaid information, and thereby informing him that though he ſhould fail therein, we, at the time and place before-mentioned, ſhall proceed to the examination of the matter and matters of fact in the ſaid information mentioned, and thereupon ſhall then and there give judgment and ſentence, as in and by the ſtatutes in ſuch caſe made and provided is directed: And we do authorize and require W. P. or any other officer of exciſe, to ſerve this our ſummons, and to attend us at the time and place before-mentioned, then and there to make a return to us of the execution of our ſaid ſummons. At which time and place, that is to ſay, at the Rotation Office in Litchfield Street aforeſaid, in the county aforeſaid, on the third day of December aforeſaid, at of the clock in the forenoon of the ſame day, before us the juſtices aforeſaid, comes the ſaid R. A. and the ſaid M. C. although ſolemnly

Defendant does not appear.

* If the hour was not mentioned in the ſummons, it ſhould ſtand generally to appear in the forenoon or afternoon, as the caſe may be.

called, neglects to appear before us, and doth not appear before us, nor make any defence againſt the ſaid charge as aforeſaid, although we have waited to the extreme part of the forenoon of the ſame day, for the appearance of the ſaid M. C. And W. N. one of his majeſty's officers of exciſe, a credible witneſs in this behalf, cometh before us the ſaid juſtices, and being duly ſworn upon the holy goſpel of God, before us the ſaid juſtices (we having ſufficient power to adminiſter an oath to him in this behalf) upon his oath ſaith, that he the ſaid W. N. did, on the day of laſt paſt, at duly ſerve the ſaid M. C. with the ſaid ſummons, by then and there delivering a true copy thereof to the ſaid M. C. and ſhewing him the ſaid original ſummons. Therefore, we the ſaid juſtices do proceed to examine into the truth of the ſaid information and complaint. And W. P. a credible witneſs in this behalf on the part of the ſaid informant, cometh before us the ſaid juſtices, and being duly ſworn upon the holy goſpel of God, before us the ſaid juſtices (we the ſaid juſtices having ſufficient power and competent authority to adminiſter the ſaid oath to the ſaid W. P. in that behalf) upon his oath ſaith, that the ſaid W. P. being an officer of his majeſty's exciſe, and for the inland duties payable to his ſaid majeſty upon

Proof of ſervice of the ſummons.

Evidence of the offence.

upon tea, on the 10th day of November, in the ſaid 18th year of the reign of our ſaid lord the now king, and in the ſaid year of our Lord 1777, upon Ealing Common, at Ealing in the ſaid county of M. about the hour of in the night, did ſeize and take from Seizure. the ſaid M. C. *as forfeited*, 159lb. weight of tea, being tea liable to the payment of the inland duties and other duties to his ſaid majeſty, and being the tea mentioned in the ſaid information, together with the package containing the ſame, and alſo two horſes which were then and there made uſe of and uſing by the ſaid M. C. in carrying and removing the ſaid tea to places to the ſaid W. P. unknown, being the horſes mentioned in the ſaid information; and that the ſaid tea was tea for which the duty due and payable to his majeſty for the ſame had not been paid or ſecured, and that no entry had been made thereof at his majeſty's Cuſtom-houſe, nor had the ſame been brought into any warehouſe or warehouſes, for that purpoſe provided at the charge of the importer or importers thereof, and approved of by the commiſſioners of his majeſty's cuſtoms, or the major part of them for the time being; and that when the ſaid W. P. ſo ſeized the ſaid tea, the ſaid M. C. was carrying and conveying the ſame away, in a private and clandeſtine manner, to ſome place or places to

the ſaid W. P. unknown, and did not nor could give any account how or where he got the ſaid tea, or where he was conveying the ſame to, and although required by this witneſs did not produce any permit or certificate for the removal of the ſaid tea: And the ſaid W. P. further depoſes and ſays, that the ſaid tea was of the value of 79*l.* 3*s.* 4*d.* And thereupon, all and ſingular the premiſes being ſeen and fully conſidered by us the ſaid juſtices, it manifeſtly appears to us the ſaid juſtices, that the ſaid M. C. is guilty of the premiſes charged upon him in and by the ſaid information: It is therefore conſidered by us the ſaid juſtices, that he the ſaid M. C. be convicted, and he is by us accordingly convicted of the offence charged upon him by the ſaid information; and we do adjudge that the ſaid 158 lb. weight of tea, together with the packages containing the ſame, and alſo the ſaid two horſes, made uſe of in the carrying of the ſaid tea as aforeſaid, were and are forfeited: And we do further adjudge, that the ſaid M. C. hath forfeited for his ſaid offence the ſum of 238*l.* 10*s.* being treble the value of the ſaid tea; the ſaid forfeitures and penalties to be diſtributed as the law directs.—In witneſs whereof we the ſaid juſtices to this preſent conviction have ſet our hands and ſeals, at the Rotation Office in Litchfield Street aforeſaid,

Judgment.

Forfeiture.

ſaid, in the county aforeſaid, the 3d day of December, in the year of our Lord 1777.

(Signed by Mr. Wood, 1778.)

Eaſter Term, 17 Geo. III.

Another conviction for harbouring run tea, on 11th Geo. I. c. 30. ſ. 16 & 39. before two juſtices.

Information.

BERKSHIRE, to wit. Be it remembered, that on the 2d day of November, in the 17th year of the reign of our ſovereign lord George the Third, now king of Great Britain, &c. and in the year of our Lord 1776, at Reading, in the county of Berks. William Pearce, gentleman, in his proper perſon cometh before us Henry Wilder, clerk, and John Reeves, eſq; two of the juſtices of our ſaid lord the king aſſigned to keep the peace, &c. in and for the ſaid county, and alſo to hear and determine divers felonies and other miſdemeanors in the ſaid county committed, reſiding near to the place where the ſeizure hereinafter mentioned was made; and as well for our ſaid lord the king, as for himſelf in this behalf, giveth us the ſaid juſtices to underſtand and be informed, that one John Bromley * was, and yet is and hath continued to be one of his majeſty's officers of exciſe, and that the ſaid J. B. did on

* Qu. Whether the time ſhould not be mentioned here, either expreſsly or by reference to the time of ſeizure?

the

Seizure by officer of exciſe.

the 8th day of October now laſt paſt, at the pariſh of H. in the ſaid county of B. ſeize as forfeited 756 pounds weight of black and green tea, in a ſtable or place belonging to James Radbourne, of H. aforeſaid, together with the package that contained the ſame, by reaſon of its being unlawfully imported, and his majeſty defrauded of his juſt duties chargeable thereon, whereby the ſaid tea and package are become forfeited; and that the ſaid J. R. did knowingly harbour, keep, and conceal, and knowingly permit and ſuffer to be harboured, kept, and concealed on his premiſes, the ſaid tea, ſo unlawfully imported, and his majeſty ſo defrauded of his juſt duties chargeable thereon as aforeſaid, whereby the ſaid J. R. hath forfeited the ſum of 469*l.* 16*s.* of lawful Engliſh money, being treble the value of the ſaid tea: And thereupon the ſaid W. P. who proſecuteth as aforeſaid, humbly prays the judgment of us the ſaid juſtices in the premiſes, according to the ſtatute, &c. and that the ſaid J. R. may be ſummoned to anſwer the premiſes, and make defence thereto, before us the ſaid juſtices. And afterwards, to wit, on the 16th day of November, in the year aforeſaid, at Reading aforeſaid, the ſaid J. R. having been previouſly duly ſummoned, in purſuance of our ſummons iſſued for that purpoſe, to appear before us the ſaid juſtices

Appearance of defendant in conſequence of ſummons.

to

to anſwer and make defence in and to the matters contained in the ſaid information, he the ſaid J. R. appears before us the ſaid juſtices, to anſwer and make defence in and to the matters contained in the ſaid information; and having heard the ſame, is aſked by us the ſaid juſtices if he can ſay any thing for himſelf why he ſhould not be convicted of the premiſes above charged upon, him in form aforeſaid: And thereupon he ſays that he is not guilty of the ſaid offence. Whereupon we the ſaid juſtices do proceed to the examination of the matter, and matters of fact contained in the ſaid information, in the preſence and hearing as well of the ſaid W. P. as of the ſaid J. R. And thereupon, on the ſame day and year laſt-mentioned, at R. aforeſaid, J. B. a credible witneſs in this behalf on the part of the ſaid informer, cometh before us the ſaid juſtices, in his proper perſon, and upon his corporal oath upon the holy evangeliſts of God, now adminiſtered to him by us the ſaid juſtices (we the ſaid juſtices having ſufficient power and competent authority to adminiſter an oath in this behalf) he the ſaid J. B. depoſeth and ſaith in the preſence and hearing of the ſaid J. R. concerning the premiſes in the ſaid information ſpecified, that on the 8th day of October laſt paſt, he the ſaid J. B. being a ſupervifor of exciſe, and having received information

Plea not guilty.

Evidence.

formation that a large quantity of ſmuggled tea was then concealed upon the premiſes of the ſaid J. Radbourne, he the ſaid J. B. aſſiſted by E. A. and E. F. officers of exciſe, went to and ſearched the premiſes of the ſaid J. R. at H. aforeſaid, about three or four o'clock in the afternoon of the ſaid day, when they found *in a ſtable and place belonging to and in the occupation of the ſaid J. R. adjoining to the ſaid J. R's barn*, 28 bags of tea, in quantity 756 pounds weight, being the tea mentioned in the ſaid information, which they ſeized and ſecured: That in the judgment of the ſaid J. B. it was impoſſible that ſo large a quantity of tea could be brought to and remain upon the ſaid J. R's premiſes, unknown to him or his family, and that the ſaid tea was then of the value of 156 *l.* 12 *s.* Whereupon the ſaid J. R. in his defence ſaith, that he knew nothing of the ſaid tea, and that he went to Wokingham with fowls that day, but does not produce any evidence to prove the ſame. And thereupon all and ſingular the premiſes being ſeen and fully underſtood by us the ſaid juſtices, it manifeſtly appears to us the ſaid juſtices, that the ſaid J. R. is guilty of the premiſes above charged upon him by the ſaid information, and we do hereby adjudge that the ſaid J. R. for his offence aforeſaid, hath forfeited the ſaid 756 lb. weight of tea, and the package

Tea found in defendant's ſtable.

Defence.

Judgment.

package containing the ſame, together with the ſum of 469*l.* 16*s.* being treble the value of the ſaid tea; which ſaid ſum of 469*l.* 16*s.* we do mitigate to the ſum of 100*l.* which we order to be paid and diſtributed as the law directs.—In witneſs whereof we the ſaid juſtices to this preſent conviction have ſet our hands and ſeals, at R. aforeſaid, in the county aforeſaid, this 16th day of November, in the 17th year of the reign of our ſaid lord the king, &c. in the year of our Lord 1776.

This conviction having been removed into the court of K. B. on a rule to ſhew cauſe why it ſhould not be quaſhed, the following objections were taken to it:

1ſt. That the goods are not ſtated in the information to be liable to the payment of any duties:

2dly. That it is not ſtated where the ſtable or place was in which the tea was found:

3dly. It is not ſtated that the tea was *knowingly* concealed by the defendant.

Mr. Wood was to have ſupported the conviction, and deſigned to anſwer the objections, in the following manner:

As to the firſt, The judges will take judicial notice that tea is liable to duty; and if tea of all kinds be liable to the duty ſtated to be chargeable

chargeable thereon, the tea mentioned in the information muſt of courſe be liable.

To the 2d. The offence is equally an offence wherever committed, and the place is not material, it not being an ingredient in the conſtitution of the offence*.

To the 3d objection (viz. that it is not ſworn the tea was *knowingly* concealed) the words of the ſtatute are "*harbour or keep*", as well as *conceal*. The witneſs ſwears to the ſeizure in a place in uſe and occupation of the defendant, and that, from the largeneſs of the quantity, *he* muſt know it, which ſufficiently warrants the juſtices to infer knowledge.

The above Conviction was confirmed without argument, the objections being (as it ſhould ſeem) given up.

Woods.

Conviction and ſentence of whipping, for cutting and ſpoiling faggot wood. Vid. 43 Eliz. c. 7.—15 Car. II. c. 2. ſect. 3.

MIDDLESEX, to wit. Be it remembered, that on this 24th day of September, in the 14th year of the reign of his preſent majeſty George the Third, of G. B. &c. at Tottenham High Croſs, in the ſaid county of

* Sed query, Whether the place ſhould not be mentioned, in order to ſhew it to be within the juriſdiction of the juſtices? Vid. Treatiſe, title Evidence, p. 86. R. v. Jeffries, on the Lottery Act.

Middleſex,

Middleſex, William Smith, of the pariſh of St. Mary Iſlington, in the ſaid county, yeoman, and Ann Aris, of the ſame place, ſpinſter, are, by Richard Steer, conſtable of the diviſion of Hornſey, in the pariſh of Hornſey, in the ſaid county, brought before me James Townſend, eſq; one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in and for the ſaid county of Middleſex, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors done and committed in the ſaid county: And the ſaid W. S. and A. A. are now here charged, and each of them is now here charged before me the ſaid juſtice, by Henry Wilmot, of the pariſh of Hornſey aforeſaid, in the ſaid county, with unlawfully cutting and ſpoiling faggot wood, the property of him the ſaid H. W. in the diviſion of Hornſey aforeſaid, in the county aforeſaid, on the 22d day of this preſent month of September, againſt the form of the ſtatute in that caſe made and provided. And thereupon, in the preſence of the ſaid W. S. and A. A. the ſaid H. W. a credible witneſs in this behalf, now here upon his oath on the holy goſpel of God, to him now here by me the ſaid juſtice duly adminiſtered (I the ſaid juſtice being duly authorized and empowered to adminiſter an oath to the ſaid H. W.) depoſeth, ſweareth, and

Information.

Evidence.

and upon his oath ſaith, that he the ſaid H. W. on the 23d day of this preſent month of September, in the houſe of the ſaid W. S. in the pariſh of St. Mary Iſlington aforeſaid, in the ſaid county of M. did find one bundle of faggot wood, and ſeveral ſticks of wood, and that the ſaid faggot wood was the property of him the ſaid H. W. And thereupon alſo comes now here before me the ſaid juſtice, John Shearman, of the pariſh of Hornſey aforeſaid, in the ſaid county, carter, another credible witneſs in this behalf, and upon his oath on the holy goſpel of God, to him by me the ſaid juſtice duly adminiſtered (I the ſaid juſtice being duly empowered and authorized to adminiſter the ſaid oath to the ſaid J. S. in this behalf) depoſeth, ſweareth, and upon his oath ſaith, in the preſencee of the ſaid W. S. and A. A. that he the ſaid J. S. on the 22d day of this preſent month of September, at the pariſh of Hornſey aforeſaid, in the diviſion of H. aforeſaid, about eight o'clock in the evening of that day, ſaw the ſaid W. S. and A. A. together, and that each of them then and there had and were carrying a bundle of faggot wood. And the ſaid W. S. and A. A. having been informed by me the ſaid juſtice of the ſaid charge, and having heard the evidence aforeſaid by the ſaid H. W. and J. S. given as aforeſaid, they the ſaid W. S.

and

and A. A. are aſked by me the juſtice aforeſaid, if they or either of them can ſay any thing for himſelf or herſelf, why he or ſhe ſhould not be convicted of the premiſes aforeſaid above charged upon them in form aforeſaid. But they the ſaid W. S. and A. A. do not, nor do either of them now here give a good account, or ſuch account as ſatisfies me the ſaid juſtice how they or either of them came by the ſaid bundles of faggot wood, or that they came by the ſame by and with the conſent of the owner thereof, nor do they the ſaid W. S. and A. A. nor doth either of them produce the party or parties of whom they the ſaid W. S. and A. A. or either of them bought the ſaid wood, or any other credible witneſs to depoſe upon oath ſuch ſale of the ſaid wood, nor do they nor doth either of them requeſt of me the ſaid juſtice any time to be ſet them by me the ſaid juſtice to produce the party or parties of whom the ſaid W. S. and A. A. or either of them bought the ſaid wood, or any other credible witneſs to depoſe upon oath ſuch ſale of the ſaid wood. Whereupon it appears to me the ſaid J. T. the juſtice aforeſaid, that the ſaid W. S. and A. A. are guilty of the ſaid offence of unlawfully cutting and ſpoiling the ſaid wood within the true intent and meaning of the

Defendants aſked what they have to ſay.

Do not give a ſatisfactory account how they came by the wood, &c.

ſtatute in that caſe made and provided, contrary to the form of the ſtatute in that caſe made and provided. Therefore it is conſidered by me the ſaid juſtice, and I do hereby adjudge, that the ſaid W. S. and A. A. are and each of them is guilty of the ſaid offence of cutting and ſpoiling the ſaid wood within the intent and meaning of the ſtatute in that caſe made and provided; and the ſaid W. S. and A. A. are and each of them is now hereby convicted thereof. And inſomuch as the ſaid H. W. now here before me, the ſaid juſtice, waives and relinquiſhes all right to any ſatisfaction from the ſaid W. S. and A. A. or either of them, for the ſaid wood, or any part thereof, as owner thereof, I the ſaid juſtice do hereby order and adjudge, that the ſaid W. S. and A. A. do and ſhall, each of them, preſently pay down to the overſeers of the poor of the pariſh of Hornſey aforeſaid, for the uſe of the poor of the ſaid pariſh of Hornſey (within which ſaid pariſh of Hornſey the ſaid offence was committed) the ſum of 10*s*. But in as much as they the ſaid W. S. and A. A. do not pay the ſaid ſum of 10*s*. to the ſaid overſeers of the poor of the pariſh of H. aforeſaid, nor doth either of them pay the ſaid ſum of 10*s*. to the ſaid overſeers of the poor of the pariſh of H. aforeſaid, but alledge and affirm that they are and each of them

Judgment.

Owner of the wood waives his ſatisfaction.

Juſtice orders them to pay 10*s*. to the poor.

Defendants unable to pay it.

them is wholly unable to pay, and cannot pay the ſame, I do order and adjudge, that they the ſaid W. S. and A. A. and each of them be immediately whipped by the conſtable of the ſaid pariſh of Hornſey, according to the form of the ſtatute in that caſe made and provided. In witneſs whereof I the ſaid juſtice have hereunto ſet my hand and ſeal this 24th day of September, in the ſaid 14th year of his preſent majeſty. Sentence.

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FINIS.